Public Utilities

FORTNIGHTLY

October 3, 1929

¶ *A Summary of the Points of Special Interest in the Most Recent Decisions, Orders and Rulings of the State Commissions and of the Courts.*

PUBLIC UTILITIES REPORTS, INC.
WASHINGTON, D. C.

The greatest advance in car journal lubrication of recent years

IN July of this year, The Texas Company announced an entirely new power-saving principle of railway lubrication. The principle has been in operation for three years on the lines of the United Railways and Electric Company of Baltimore, where it was originally worked out in co-operation with The Texas Company. Tests are now being conducted by Texaco engineers on a number of the largest street railway systems of the country.

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Public Utilities Fortnightly

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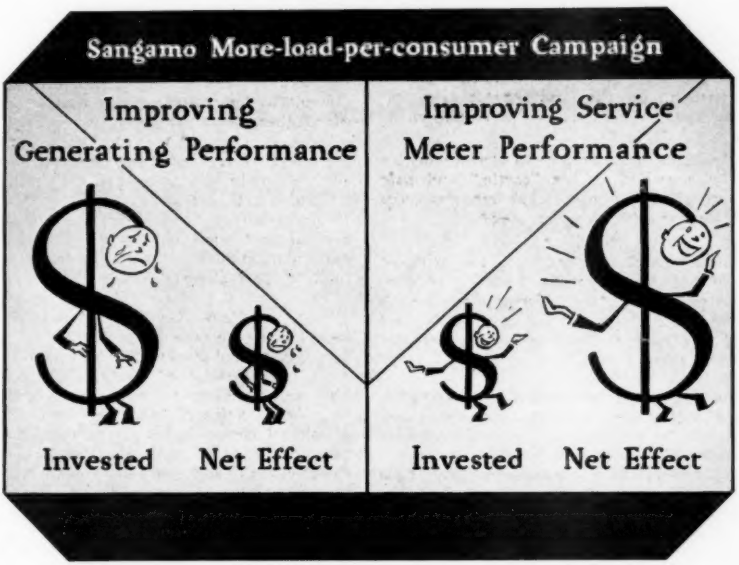
PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY; a magazine dealing with the problems of utility regulation and allied topics, including the official decisions of the State Commissions and courts; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication. Published every other Thursday; 75 cents a copy; $15.00 a year; with bound volumes and Annual Digest, $32.50 a year. Editorial and advertising office, Munsey Building, Washington, D. C., circulation office, Duffy-Powers Building, Rochester, N. Y. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879.

Don't Dilute Your Dollars



Every dollar spent to save coal or steam, or to reduce losses in the power plant, must be several times diluted before it actually appears in the net.

But every dollar spent to improve the accuracy of service meter performance is 100 per cent effective in its application to the net. Why not invest in improved overload accuracy?

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Pages with the Editors

WITH the convening of Congress and the renewal of the inquisitorial activities of the Federal Trade Board into the business plans and policies of the public utilities, looms again the question as to just how far the government authorities are enabled by law to go through the files and records of a private corporation in search of information.

* *

To what extent can a man's home or his office be regarded as his "castle," and safe from intrusion? Under what circumstances can it and should it be invaded?

* *

THE increasing tendency on the part of some of our population to regulate the conduct of the rest of us is being viewed with misgivings by those who believe that their privacy, as well as their rights to privacy, are being taken away.

* *

CONFLICTS—personal as well as legal—between the Regulator and the Regulatee—are of common occurrence, as the news columns of the daily press attest; prohibition officers, censors, investigating committees, Blue Law lobyists and reformers generally are in the saddle and riding hard.

* *

A GROWING number of sufferers from this form of annoyance can sympathize with the traveller who had an extraordinarily red nose.

* *

OVERCOME with curiosity, a fellow passenger asked the victim:

"I SAY, old man, what's wrong with your nose?"

"NOTHING at all," replied the man. "It's simply blushing with pride because it doesn't stick itself into other people's affairs."

* *

WHAT the law has to say on the subject of this form of intrusion into what one regards as his private affairs will be told in an article that is now in preparation by the staff of this magazine.

* *

SPECIFIC cases will be cited to show what a man's rights or a corporation's rights to privacy are, and how the law of search and seizure has been interpreted by the courts.

* *

THIS article will appear in the October 31st issue of PUBLIC UTILITIES FORTNIGHTLY.

* *

DURING the past year we have been hearing the term "State Socialism" bandied about; especially during the presidential campaign of last fall.

* *

JUST what *is* "State Socialism?"

* *

APPARENTLY the authorities differ; it is difficult to find two opinions that check with each other.

* *

PROF. ROY L. GARIS, of Vanderbilt University, not only has some fairly definite opinions of what State Socialism is, but also of what its effect upon American industry in general and the public utility industries in particular are likely to be—as viewed in the light of past experiences in history.

* *

AND as PROF. GARIS combines with his knowledge of economics a facility for writing (he is a contributor to the *Saturday Evening Post, Scribner's* and the *North American Review* as well as to such special periodicals as *Social Science Magazine* and *National Municipal Review*), his forthcoming contribution in the next issue of PUBLIC UTILITIES FORTNIGHTLY not only furnishes food for thought, but furnishes it in particularly palatable form.

* *

DR. JOHN BAUER, whose article "The Public Uses and Private Abuses of the Holding Company" appears on pages 407-415 of this number, is a frequent contributor to the magazines. He is the finance and rate authority on the staff of the American Public Utilies Bureau of New York, is widely known as a rate expert in court cases, and is at present engaged in the study of utility rates recently instituted in New York State by Governor Roosevelt. He received his Ph.D. degree from Yale in 1908.

* *

HENRY C. SPURR, ELLSWORTH NICHOLS and FRANCIS X. WELCH, all of whom contribute articles to this issue of the magazine, are of our own editorial staff.

* *

FROM Alabama comes this gratifying official letter of commentary upon an editorial policy that—in the opinion of the editors, at least—has been largely responsible for the rapid growth of this magazine during the past few months:

* *

"THE editorial policy of PUBLIC UTILITIES FORTNIGHTLY, in the matter of conducting the magazine as an open forum for the dis-

(Continued on page VIII)

cussion of both sides of controversial questions within the field of regulation, should contribute much to the information of the increasing number of readers of the magazine.

* *

"It will give added confidence in such discussions if the editors will invite contributions by those representing the extreme views as well as those whose views are less extreme, on both sides of such questions.

* *

"There is no safety for the public utilities or for any other business except in facts and in the truth—and in the observance of both."

* *

The endorsement of this policy appears to be unanimous; even the "extremists" themselves concur.

* *

The most interesting Commission decisions published in this issue of Public Utilities Fortnightly (turn to the Public Utilities Reports section, beginning on page 445) are the following:

* *

Liability insurance for taxicabs and public cars has been placed within the regulation of the Nebraska Commission by act of the legislature; an order of the Commission covering this subject appears on page 561.

* *

The factors entering into the Commission's action in regard to liability insurance are discussed and rules are established; the size of a city in which an operator does business and the accident records, in the opinion of the Commission, cannot be considered in determining the amount of insurance requirements.

* *

The Nebraska Commission again stated the rule that it is not within the province of the Commission to declare unconstitutional a law relating to Commission action.

* *

Another attempt by a street railway to increase fares limited by contract, by merely filing new schedules, has met defeat before the New York Transit Commission. (See page 576). Increasing fares by filing new tariffs, in the opinion of the Commission, can be done only when there are no contract or legal restrictions.

* *

The repair of highways by a street railway, according to a recent decision of the New Jersey Board, (see page 591), is not a matter within the jurisdiction of that tribunal unless the damaged condition of a highway is the result of street railway operation, or the company has been obligated to repair such damage.

* *

While it has frequently been held that a proposal of lower rates is not in itself a ground for admitting competition, the desirability of a proposed rate schedule may be an important factor in deciding which of two companies should be authorized to operate in new territories. (See page 592).

* *

Aside from the question of rates, the cost of service extensions and geographical considerations may have a bearing upon the question which of two utilities should be permitted to serve.

* *

An offer by one of two companies, both seeking authority to operate, of a special condition to prospective customers is not a ground for awarding authority to that company, says the Missouri Commission, where there is nothing in the company's schedule on file to warrant the promise.

* *

Street car riders in Indianapolis voted on the question of a proposed skip-stop system and defeated it. The Commission, as a result, has dismissed a proceeding against the company to compel the adoption of the skip-stop plan. (See page 601).

* *

A railway company ready, willing, and able to render motor car service has been authorized by the Oklahoma Commission to do so instead of a motor bus operation. (See page 603).

* *

The North Dakota Commission has had before it the question of a line rent formula imposing a variable excess radius rate upon rural telephone patrons. (See page 613). The question of rerouting toll traffic was also before the Commission, but was held to be a managerial matter.

* *

A soda fountain and barber shop equipment cannot by any stretch of the imagination be classed as "plant and equipment of a telephone company," says the same Commission.

* *

As evidence of the value of land used by a water company for a pumping station, there was produced an estimate which was calculated by using one-half of the amount of savings to the company by use of water power for pumping as against the use of electricity. The Pennsylvania Commission has disposed of the question whether this is a proper way to value the property. (See page 618).

* *

What property is used and useful, has frequently been decided by the Commission. This problem has been disposed of by the Pennsylvania Commission in valuing water utility property; there the question arose over obsolete buildings and fire emergency pumping equipment.

*

The next issue will be out October 17th.

—The Editors.

OCTOBER

Reminders of Coming Events — **Utilities Almanac** — *Notable Events and Anniversaries*

3	T^{h}	The first electric railway outside an exhibition ground was operated at Lichterfelde, Germany; it was 1¾ miles long and its motor carried 36 passengers; 1881.
4	F	Transatlantic transportation was given a new impetus with the launching at East Boston, Mass., of the mammoth 4,000 ton clipper ship *Great Republic;* 1853.
5	S^{a}	GEORGE WESTINGHOUSE, whose invention of the airbrake revolutionized railroad travel, was born at Central Bridge, N. Y.; 1846.
6	S	The time-table had its inception with SOLOMON SMITH and JAMES MONROE, who announced a stage-coach schedule between New York and Philadelphia; 1732.
7	M	Experiments by GUGLIELMO MARCONI led him to conclude that "Hertzian waves" could be used for telegraphing without wires, thus pointing the way to radio; 1896.
8	T^{u}	The country celebrated the formal opening of the Erie and Champlain canals with the passage of the first boats into the waters of the Hudson amid the boom of cannon; 1822.
9	W	The first two-way telephone conversation over a commercial line was held between Boston and Cambridgeport, Mass., over a two-mile wire; 1876.
10	T^{h}	The first railroad train to draw out of Chicago left the 22nd Street Station over the Rock Island tracks; it was drawn by "The Rocket" locomotive; 1851.
11	F	¶*The annual convention of the American Gas Association will begin its sessions at Atlantic City, N. J., this coming Monday, October 14th.*
12	S^{a}	RODRIGO DE TRIANA, a sailor on board the *Pinta,* the first transatlantic vessel recorded by history, descried America at 2:00 A. M.; 1492.
13	S	The Union Pacific Railway Company, unable to weather the financial panic that shook the nation, went into the hands of receivers; 1893.
14	M	The Act creating the Georgia Public Service Commission was formally approved by the Georgia legislature; 1879.
15	T^{u}	The dirigible ZR-3 demonstrated the possibilities of balloons as public utilities of the air by flying from Germany to the U. S. with 32 men; 1924.
16	W	The first hydroelectric central station, operating 250 16-candle power lamps, was opened at Appleton, Wisc., six weeks after EDISON'S New York station started; 1882.

"He that invents a machine augments the power of a man and the well-being of mankind."
—HENRY WARD BEECHER

"The Progress of Transportation"

DETAIL OF A PANEL EXECUTED BY KARL BITTER IN 1895, IN THE BROAD STREET STATION, PHILADELPHIA

" . . . in front of the horses, forming the advance of the procession, is a group of children—one of them carrying the model of a locomotive, another a model of a steamboat, while the smallest and youngest child runs ahead with a model of an airship, indicating a future method of transportation."

Public Utilities
FORTNIGHTLY

VOL. IV; No. 7 OCTOBER 3, 1929

The PUBLIC UTILITIES AND THE PUBLIC

STREET railway companies seem to have stolen a page out of the books of the gas and electric companies. For the past few months an epidemic of the so-called promotional rates for gas and electric service has swept over the country. The idea of the promotional rate, as one manager put it quite briefly, is simply "the more service you use, the cheaper it gets."

The promotional rate is now an acknowledged sound business policy of many gas and electric companies. It stimulates consumption through the use of heavy duty appliances and places distribution costs where they belong—on the "loafing" consumer. Now the street railway companies are beginning to take advantage of this improved form of rate making.

In most cities the 5-cent fare has gone the way of the nickel movie and the 5-cent ice cream soda, but now it appears that St. Louis is to be treated to a return of the golden days of nickel car rides provided only one rides often enough the same week.

The promotional rate as applied to gas and electric utilities allocates the distribution expense by a proportionately large minimum charge and possibly a combination of the service charge plus an initial block; the next block is lower and the next still lower so that the more service the consumer takes the less per unit it will cost him.

The St. Louis street railway company copies this idea faithfully. The company asked for a cash fare of 10 cents throughout the city. This fare for the occasional rider is quite analogous to the "initial" or "service" charge on the gas and electric consumer who fails otherwise to take enough service to pay his share of the distribution cost.

Next, the company asked for permission to issue a weekly commuta-

tion ticket good for twelve rides for 90 cents; all of these rides to be valid for a period of one week beginning at 3 A. M. Monday morning and ending at 3 A. M. the following Monday. Tickets were to be sold as early as the Saturday prior to the week for which they might be effective and remain on sale for the balance of the entire week. Not more than one person should ride on this ticket but the ticket would be transferrable.

Here is where the promotional rate develops. If the twelve rides are used the bookholder may ride for 5 cents a ride during the remainder of the week for which the ticket is valid by exhibiting this ticket and paying a 5-cent fare in addition. If any holder of a ticket should ride less than nine times in any week he shall be entitled to a refund of 10 cents for each ride less than nine which he has failed to use.

The Missouri Commission in allowing the proposed schedule to go into effect was of the opinion that the principle of the proposed schedule was correct, but stated that it is not to be expected that a schedule with the proper weight attached to all factors can be devised in a laboratory. The Commission stated that experience would undoubtedly show what amendments are necessary to remove any inequities and to accomplish the ultimate purpose of increasing riding, improving revenues, and at the same time decreasing the cost of service to regular patrons.

This may at first blush appear to be an anomaly. A schedule may be devised to accomplish these purposes. It has been the experience in the field of power, light, and water utilities that such a schedule does result in accomplishing these apparently inconsistent ends, and the Commission felt that a schedule embodying these principles could be successfully applied to street railway fares.

Of course, the Commission admitted that in the very nature of things, it is impossible to apply the "ready to serve" charge to the street railway business as it is applied to the gas or electric business. The latter utility might charge all connected persons a certain sum whether or not any service is used. The street railway, however, could scarcely charge all whom it is ready to serve whether or not they ever board a car. The opinion of the Commission states:

> "The street railway system has ceased to be the exclusive day, night, and holiday service of all great cities and has now become largely a peak and standby service. This is illustrated by the increase in riding during the peak morning and evening periods and the very great decrease in riding at all other times. The vast majority of the citizens of St. Louis still use the street car to transport them to and from their work, and the surface street railway is still the primary mode of transportation for the city of St. Louis. It is not just that those who do not regularly use the street cars as a means of transportation but to whom the street cars furnish a 'break down' service in inclement weather and at other times should pay the same fare as those who make regular use of this transportation. In water, power, and light utilities every scientific schedule of rates takes account of the load factor and the amount of use of the service. No schedule of street railway fares in St. Louis has ever taken account of these factors. The regu-

lar rider is as much entitled to a lower rate of fare than the occasional rider, as the regular and constant user of water, light, and power is entitled to a lower rate than the casual user. The regular rider is now contributing a larger proportionate share of the fixed operating expenses of the street railway than the occasional rider."

All street railway companies should regard with interest the result of the St. Louis rate experiment. This rate will have its greatest effect on the off-peak periods because the twelve rides on the ticket are just enough to take care of the daily working transportation of the average citizen which is an "on-peak" service. The 5-cent ride will mean riding almost entirely during the off-peak traffic periods.

Statistics of the last few years show that the decrease in street car riding has taken place almost entirely in the off-peak period and that the number of revenue passengers carried during the morning and evening peak periods is as great or greater than in the most prosperous years. It is in the interest of the company, the city, and the car-rider to determine what factors have entered into the decrease in patronage and the relative importance of such factors so that a proper adjustment may be made in the schedule to build up riding and revenues.

Re St. Louis Pub. Service Co. Case No. 6510.

The District of Columbia Commission Has No Jurisdiction Over Submetering

SOMETIME ago we reported in these pages that the District of Columbia Commission had approved a regulation of the local power company to limit the purchase of electric energy to the consumer's own use. The right of tenants of a building to purchase electricity directly from a public utility company instead of taking it through submeters after it is purchased by the landlord was sustained by the Commission.

A recent decision by Justice Jennings Bailey of the District of Columbia supreme court holds that the Commission under the Federal statute has no jurisdiction over the submetering of electric current. The court dismissed four suits for injunction against the Commission of the power company, however, by owners of office buildings and apartments who purchase current on the wholesale price and submeter it to their tenants at higher rates.

This was done because the court found that the Commission's order did not forbid submetering but merely approved a form of contract opposed by the power company containing provisions against submetering.

The memorandum opinion filed by Judge Bailey is as follows:

"The bills of complaint in these cases were brought in a double aspect, both as proceedings under the statute, and also as ordinary bills in equity. Upon the courts' holding that this could not be done, the plaintiffs elected to proceed under the statute. As I construe the statute, the Public Utilities Commission has no jurisdiction over the particular

kinds of submetering involved in these cases. The Commission's order, however, does not forbid submetering but merely approves a form of contract, proposed by the power company containing provisions against submetering. It is conceivable that such a contract might contain provisions as to many matters not within the jurisdiction of the Commission, which might nevertheless be perfectly legal. So, without passing upon the legality of these submetering provisions, in my opinion, the order of the Commission is not void. If these provisions are illegal, the parties have their remedy by proceedings in the proper courts. The motions to dismiss the bills will be sustained."

The New York Supreme Court Refuses to Halt Rate-Cutting Taxicabs

THE taxicab business has entered the field of mass transportation. It used to be the chance vehicle of the upper classes but now it appears to be competing with street cars for the privilege of carrying workmen. And with the initiation of the 25-cent flat rate in some of our largest cities a quartette of passengers might well ride for .0625 cents apiece and even afford to toss a dime tip to the driver.

Three things have contributed probably more than any other factor to the advent of the cut-rate taxicab.

First of all is the combination of cheaper automobiles and better highways to run them on. A light, new, and shiny five-passenger closed cab can now be bought and painted any color of the rainbow for as low as $1,000. Fairly good used cabs can be bought for proportionately less sums.

Next we have increased street car fares and hard times in the street railway industry making it impossible for them to expand their service to follow the trend of the traffic.

Finally there has grown up a distinct public demand for the exclusive flexible service of the cab as compared with the fixed route and schedule of the street car or bus. Who wouldn't pay a few cents more for a door-to-door service?

It was estimated last December by the president of the Paramount Cab Manufacturing Company that 20,000 taxicabs then operating in New York city have an annual income of $160,000,000. This means that for every $1 received by all other public transportation agencies including subways, elevated surface lines, and busses combined in New York city, $1.02 is spent for taxis. Street car companies are beginning to feel this competition —competition from a quarter never before bothered about. Five years ago cabs were a luxury—today they are, figuratively speaking, under your feet. To make the story sadder for the street railway companies, it is a fact that the taxicab operators are not regulated in the vast majority of states. Cab drivers can cut rates, abandon service, poach on foreign preserves, ignore depreciation and maintenance, and frequently the very laws of economics, and, in short, do anything they please while the street car and bus operators must wearily tread the straight and narrow path of Commission regulation and pretend to

ignore the antics of the multicolored competitors.

Over one-half of the population of Washington, D. C., works for the United States Government, and since all Government Departments open at 9 A. M. the corners of the Capital city about 8:30 in the morning are jammed with workers waiting for street cars, all bound for practically the same neighborhood. Some months ago the local taxicab operators decided that its drivers could load their cabs with these workers at 10 cents each with profit. The plan worked for a few days until it rained. But the rain brought too big a temptation. The drivers forsook their humble 10-cent patrons for bigger rewards.

More recently in Rochester, the New York State Railways attempted to check a number of cut-rate taxicabs operating in that city on a 35-cent flat rate. A New York law provides that a transportation agency cannot carry passengers for hire about the streets of the city at a rate of fare less than 15 cents per passenger unless a certificate of convenience and necessity be obtained from the Public Service Commission.

The street railway contended that since it was possible for four persons to ride in a 35-cent cab, the rate per passenger was .0875 cents and, therefore, the cabs were violating the law. In refusing to grant the injunction requested, Justice Knapp of the supreme court stated in the course of his opinion:

> "At no place from the time of hiring to the time of discharge has any other person any rights to the use of that cab. The right to the exclusive use vests in the passenger. If, perchance, the passenger desires to invite one, two, or three to accompany him in the use of the cab from the point of hiring to the point of discharge, the defendants will carry them, and the rate is the same, to wit, within the 2-mile circle, the sum of 35 cents. The court is unable to agree with the claim of the plaintiff that if this is done that it amounts to a charge of 8¾ cents for each passenger, assuming that four occupied the cab, and that the distance was within the 2-mile circle. No specific charge in the illustration above quoted is made to the individual passenger in the cab, that he or she pay to the defendant for such service the sum of 8¾ cents for each individual transportation. The charge is made for the use of the cab. It is wholly immaterial as to whether the four people in the cab make contributions among themselves as to the 35 cents to be paid or whether one person pays it entirely. The fact, nevertheless, remains that the defendant, in the illustration cited, is receiving for the use of its cab and the particular service that it renders, the sum of 35 cents for the trip, and if that be true, it would seem not to be a violation of § 26 of the Transportation Corporation Law, and no certificate of public necessity would be required upon that ground alone."

New York State Railways *v.* Monroe Cab Corp. 236 N. Y. Supp. 6, July 8, 1929.

Is There a Trend toward Statewide Uniform Rates?

GOVERNOR Roosevelt's speech at the New York State Fair in Syracuse stating that the lack of uniformity in electric rates throughout the state of New York is discriminatory is one more indication of what might seem to be a definite trend toward statewide rate making. It is

something new and certainly interesting.

Some months ago a statewide promotional rate calculated to stimulate the use of heavy duty appliances by the average household was inaugurated by the Georgia Public Service Commission placing into effect a service charge of $1.11 per month for meters of ten amperes or less; $2.22 per month for meters over ten amperes, plus an energy charge of a relatively high initial rate for the first 50 kilowatt hours, decreasing by over one-third for the next 150 kilowatt hours and by over a half for all over the next 200 kilowatt hours.

The Commission said that the merging of electric properties into an inseparably connected system in urban and interurban communities alike removes the justification of lower rates to large populated centers as compared with thinly populated communities, and that the same schedule of residential rates should in such a situation be applied to all customers alike throughout the state.

There is reported a similar movement afoot before the Alabama Commission, and there have been press reports of similar agitation in North Carolina. Now comes Governor Roosevelt's speech in Syracuse asking for revision of electric rates in the Empire state that will put the farmer on an equal footing with his urban brother. When these things are considered, along with the statewide consolidations that are going on about us every day, it makes one wonder whether statewide rate making is not really a thing to be reckoned with seriously.

It is conceivable that urban, suburban, and rural communities of a state can be so inseparably interconnected with a single statewide system operated or at least controlled by a single utility that a uniform rate would be a wiser policy than attempting to allocate in various communities utility property for local rate making. If the result of rate-making property allocation between an urban and suburban community would mean only a difference of a few cents, it might be well to split the difference and call both rates even. Possibly the saving in separate rate valuations would more than make up the difference.

But this is a matter of policy, not a matter of right. Whether the farmers of any particular state, having defrayed their share of the expense of service extensions, are then entitled to a rate approximately equal to that extended to city consumers should be a matter of fact to be ascertained by rate experts. To say, however, that the mere existence of a rate differential between the New York farmer and the New York city dweller is itself evidence of rate discrimination is making a rather broad statement without further substantiation.

A Federal Court Restrains a Rate Order of the Montana Commission

THE rather celebrated decision of the Montana Commission revising the natural gas rates of Great Falls appears to be upset by the recent action of the United States District Court, in granting an injunction

after more than fifteen months of hearings and litigation that started coincidentally with the piping of natural gas into the Electric City from northern Montana in May, 1928, as a substitute for artificial gas.

We have already noted in these pages the decision of the Montana Commission ordering a change in rates effective November 3, 1928. Before this date, however, a temporary injunction was granted by the Federal Court at Butte. The recent action of the Federal Court makes this injunction permanent. The Court found that the Great Falls Gas Company had not received a fair return on its investment and said, in effect, that the rates decreed by the Commission apparently were based on possible future business instead of actual customers served.

An interesting fact to be remembered in connection with this decision is that the Commission set what is believed by many to be a new precedent when it ordered the gas company relieved of its 2 per cent franchise tax on gross receipts. There has since been much discussion over whether or not the Commission has power to set aside this bargain between the city and the utility. The gas company's officials said that they had not asked for relief from the franchise tax, and the court in its decision declined to consider this angle. The company has continued to pay the tax.

The principal holding of the Court was to the effect that a rate schedule based on possible future expansion was sufficient to overrule the order of the State Commission.

In support of its contention that its own schedule was fair, the gas company submitted a table showing the average rates in other cities as prepared by the bureau of mines of the Department of the Interior. The average cost per one thousand cubic feet were rated as follows:

Great Falls	50
California	70.6
Illinois	70
Kansas	68.1
Montana	44.1
Ohio	61.6
Pennsylvania	60.4
Wyoming	66.4
Arkansas	45.1
Colorado	86.3
Indiana	53.5
Missouri	91.6
New York	65.1
Oklahoma	50.2
Texas	66.4
Wyoming	44.1

It is not known whether there is any intention on the part of the Commission to appeal from this decision. The opinion of the Court says:

> "It appears that for nineteen years the plaintiff operated an artificial gas plant in the city of Great Falls, in capacity reasonably appropriate to the needs of its patrons some 4,200 in number at the end of the period, at a profit less than a fair return. May 2, 1928, it substituted natural gas of heat units double that of artificial gas, at rates per one thousand cubic feet some 61 per cent less than heretofore.
>
> "In timely notice of the new rates plaintiff's attitude was that the greater demand would require it to expend much money in new construction; that several or three to five years would be required to extend and develop its plant and business to a point where a reasonable return on its investment could be expected at rates fair to its patrons as well as to itself; and that in the meantime its new rates were warranted by good business policy, whether or not productive of a fair return.
>
> "The Commission did not deter-

mine rates which would provide a fair return but rates which might do so several or three to five years in the future. To that end, its forecast exceeded the plaintiff's 16 per cent in the number of patrons that might be had and 52 per cent in the amount of gas they might buy."

A Water Company Does Not Have to Supply Competitors

THE supreme court of Missouri has sustained the Commission of that state in refusing to compel a water company to supply a customer engaged in the competitive service. It was an interesting and peculiar case. Here were the facts.

A certain iron foundry, having a well drilled on its own property, supplied itself, a nearby railroad roundhouse, and several neighboring dwellings with water. The company also had a 2-inch meter connection with the Joplin Water Works Company's main. The utility claimed that the iron company was using this supply as standby service to fulfill its contract with the roundhouse and other customers when its own pump was out of water. The iron company claimed its right to this meter supply for fire protection.

Some months ago we reported in these pages the action of the Missouri Commission in holding that the iron foundry was not a part of the "public" as far as its rights to insist upon service was concerned, since it had forfeited that right upon engaging in competition with the local waterworks. Its complaint before the Commission was dismissed. In sustaining the Commission, Judge Frank, rendering the opinion of the supreme court, stated:

> "When appellant sold water to the railroad and to individuals, it was carrying out its own private contract with its customers. It would not accord with reason or justice to say that the water company must *furnish water* to appellant, a competing company, to enable it to perform its own private contract, and we decline to so hold. This conclusion disposes of appellant's contention that the unwarranted and unlawful act of the water company in disconnecting the 2-inch meter deprived it of property rights and amounted to the taking of property without due process of law. Appellant never had a lawful right to the service it is now demanding, therefore, the act of the water company in discontinuing such service was neither unwarranted or unlawful. Such service, if granted, would be a special privilege, unfair and discriminatory. The continued enjoyment of a special privilege does not ripen into a right where, as here, such special privilege is unfair and discriminatory."

Rogers Iron Works *v.* Public Service Commission, No. 29,465.

The Amortization Period of Rate Case Expense Is Usually Five Years

ANY extraordinary operating expense, according to the rule adopted in the past by most Commissions, may and should be spread over several years. The cost is not considered a normal yearly expense, espe-

cially if such extra cost results in permanent benefits to the utility. In this manner the expense of cleaning wells of a water utility which was not in the habit of cleaning them every year, and the expense caused by the freezing of water mains during an unusually severe winter were both spread over a term of years as operating expenses not annually accruing.

Likewise, the expense of rate proceedings, while not exactly permanent in their effect for better or worse upon the utility, has been divided between successive years. This process is called amortization and the theory of amortization is that since benefits derived from an extraordinary expense are likely to accrue for more than one year then more than one annual generation of ratepayers ought to share in footing the bill.

Of course, if the abnormal expenses were all lumped in one annual charge, it would not ultimately affect most consumers much differently than if they were amortized. The man who takes water service today is quite apt to be taking it three years from today if he is still living. But that is just where the rub comes in; he may not be living. In the course of human events a certain portion of every utility's patronage moves in, dies, or moves out every year. It is for these consumers that amortization is chiefly effective to prevent discrimination either for or against them.

The question next arises as to just how long rate case expenses should be amortized. In twelve leading cases up to 1925 from various states in the Union, expenses were amortized over a period of three years. In five cases during the same year a 4-year period was allowed. A 5-year spread, however, appeared by far to be the most favored treatment of rate case expense occurring in no less than twenty leading cases up to 1925, and in the majority of cases since that time. Other periods of six, seven, and even ten years have been allowed in rare cases.

It is difficult to say in this connection just how permanent are the benefits of a rate proceeding. There is no telling in view of the continuous character of Commission regulation just how long any particular utility can go without another rate revision. That is probably why a uniform period was never adopted but it seems safe to say that five years is the usual time.

The Blimp Challenges the Plane for Air Business

SCARCELY a week passes that does not bring to us news of new commercial developments in air transport. From all states of the Union we hear of new companies forming, new routes established, and new certificates issued by the various Commissions. Commissions have for the most part taken the new utility under their wings and the constant increase of passenger and freight traffic seems to settle beyond all doubt, if there ever was any of late, the fact that the utility of the air is here to stay.

But possibly all commercial air enterprise in America has so far developed along the line of heavier-than-air craft. Three things have come to

pass recently, however, which makes us wonder whether the flying wing is really the ultimate course to be followed in commercial air transit.

Granted that the dirigible is a helpless, clumsy nuisance for military purposes except perhaps as the carrier of light planes, granted that heavier-than-air craft is faster, cheaper, and more advanced than the cruising blimp, nevertheless who can safely predict that lighter-than-air craft, safely and surely running on schedule with ease and comfort in spite of wind and storm, carrying tons and tons of merchandise, is not to be seriously reckoned with at least as a factor in the development of our future air business?

First we were treated to the grand spectacle of the globe circling Graf Zeppelin. It seems to cross oceans as nonchalantly as the Mauretania. Certainly, in Germany, at least, there is strong conviction in some quarters that the Zeppelin is the safest air vehicle for transoceanic travel.

Next we heard of the tragic crash of the Transcontinental Air Transit plane, the City of San Francisco, on the side of Mt. Taylor, New Mexico, killing five passengers and a crew of three. This catastrophe came as a result of a storm, which, according to press reports, would have meant nothing to the Graf Zeppelin.

Finally we hear of two companies, one in Ohio and one in New York, preparing to construct blimps for use in commercial transportation in the United States.

Since the discovery and use of helium, the danger of lighter-than-air flying has been reduced to a point almost comparable to the average long automobile tour. Speaking on this subject, *The Traffic World,* August 24, 1929, said:

> "When railroads were started in this country and the use of steam power was clearly indicated as the only method by which the economical movement of passengers and goods could be accomplished, there was discussion as to whether the locomotive or the stationary engine should be used. The fact that there was such a discussion has passed from the memory of men and is to be found only in books of long ago or in incidental references to the fact. There was, however, no such wide difference between the two sorts of engines as there is between the plane and the dirigible balloon moved through space by an internal combustion engine.
>
> "Any allegation on the question would be foolish. In a month or two months, so active are men with plans for air transportation, the answer might be as ridiculous as the poem about Darius Green and his flying machine. The poem, as a poem, is fine. As a prophecy, by implication, it is less valuable than the predictions of goose bone weather observers."

Where Meters Must Be Repaired Quickly

An electric company, in removing a meter which has been tampered with, without evidence that the consumer on the premises or his family is guilty, is liable for damages resulting from the discontinuance of service for an unreasonable time before replacing the meter, according to a ruling of the Louisiana supreme court.

The Rising Costs of Public Utility Stocks

When and to what extent is a Public Service Commission justified in interfering with consolidations when it considers the prices paid for securities as excessive?

By HENRY C. SPURR

When Benjamin Franklin was seven years old his friends, on a holiday, filled his pockets with coppers. Being charmed with the sound of a whistle in the hands of another boy, Franklin voluntarily offered him all his money for the whistle. He then went home whistling all over the house, much pleased with his purchase, but disturbing the family with his new toy.

His brothers and sisters and cousins, understanding the bargain he had made, told him he had paid four times what the whistle was worth. "This," said Franklin, "put me in mind of the good things I might have bought with the rest of the money; and they laughed at me so much for my folly that I cried with vexation; and the reflection gave me more chagrin than the whistle gave me pleasure."

This business transaction of little Benjamin Franklin made a deep impression on him. When he grew up and came into the world and observed the actions of men he thought he met many, very many, "who gave too much for the whistle."

This giving-too-much-for-the-whistle question has been bothering the public utility regulatory authorities off and on ever since the trend toward consolidation of utility companies began. The question has been: How far is a Public Service Commission justified in saying to the companies concerned:

"We shall not allow you to consolidate if in our judgment you are paying too much for your whistle."

The general impression of those who are taking alarm at the holding company situation is that the holding companies are buying whistles at exorbitant prices and the fear is expressed that both stockholders and ratepayers are in danger of being "gyped," to use a popular expression.

When a Public Service Commission says "No" to a proposition to consolidate on the ground that the price of the whistle is too high, it is, of course, interfering with the right of the owners of the whistle to get what they can for it.

How far can Commissions do this in the public interest?

Just what is the public interest that requires this particular species of protection?

IN Franklin's case there would be no reason for the state to interfere, assuming that he had paid too much for a whistle after becoming of age. The old legal maxim "let the buyer beware" would apply. The state has not yet become so paternalistic as to inquire into the price of whistle transactions between individuals in the absence of fraud, but in the case of public service corporations a different rule is said to be needed. Rates for utility service must be reasonable and, if the price of the whistle would affect rates, the public would have a vital interest in seeing that too much is not paid for it.

Many who look with apprehension on this question think that rates will be directly affected by the price of the whistle. Franklin's brother told him he had paid four times what the whistle was worth. There are persons who still think that if this had been done by a public service corporation, the company could capitalize the full amount paid and charge rates high enough to pay a reasonable return on that amount; but the rule is that the return and consequently rates must be based on the real value of the whistle, which in Franklin's case was only a quarter of what he paid for it. But even Commissioners who know that capitalization of the cost of property is not the modern rule of rate making sometimes feel that the price of the whistle may somehow affect rates. For example, the Indiana Commission has said:

> "If utilities are bought at too high a figure a raise of rates is inevitable and when the rates are raised, public relations will necessarily be made worse instead of better." *

It is very difficult, however, to see how the cost of the whistle—the price paid for public service operating company properties—can have any direct bearing on rates charged consumers of service supplied by the operating company. The rule that the return to which the companies are entitled is to be based on the value of the property rather than on its cost is too well settled to require the citation of authorities in support of it. In the very first Supreme Court case in which the question came up, the company claimed the right to earn a return on its capitalization, but the court held that the return must be based only on the fair value of the property. Therefore, if a holding company, as in Franklin's case, should pay four times what the whistle was worth, it would, under the rate-making rule, be allowed to earn a return on only a quarter of what the whistle cost. Likewise this would mean that if the company bought the whistle for half of what it was worth, it would be permitted to earn a return on twice what it paid for it.

EVEN if the prudent investment theory were adopted as the basis of rate making, that is to say, if the return were limited to the prudent cost of the whistle rather than what it was worth, there would be no need, from the rate-making standpoint, to veto the sale of the whistle at a high price. When the Commission came

* *Re* Assoc. Teleph. Co. (Ind.) P.U.R. 1928D, 380.

When the Commissions May Disapprove of Consolidations

"WHETHER the Commissions have the right to disapprove of consolidations at a price beyond the value of the property in so far as this may affect the value of security issues of the holding company, would depend upon the express language of the statutes defining the Commission powers. A state may forbid the issuance of securities of any kind of a company to an amount beyond the value of its property, but if a state has not done so, it would seem that it would be beyond the power of a State Commission to do so indirectly by forbidding a consolidation merely because of fear of an over issue of securities."

to the question of rate making the rate base would be the prudent cost of the whistle, not its actual cost.

Approval of the sale of utility property by a Public Service Commission does not bind the Commission to adopt the sale price as the basis for calculating the return. It is for this reason that some Commissions have allowed the transfer of utility properties at what they deem to be excessive prices. In one case, for example, the Missouri Commission said:

> "While the purchase price is considerably more than the appraisal shows the property to be worth, the Commission feels that it 'should not arbitrarily interfere with the transfer of these properties, nor intervene as to the price paid by parties competent to contract, who desire to pay excess prices for what they purchase, or deny to the seller the benefit of his contract, and its chief function is the exercise of its lawful power to cause good service and reasonable rates to be given to the public so that efficient service will be rendered by the utility and a fair and reasonable return be made the investor in the rate authorized for this service.
>
> "'However, purchasers of these plants paying an excessive value should not be allowed to charge this excess to plant account, nor should they be allowed as against the public in a valuation of the system, a return upon these excess investments.'" *

WHEN it is believed that the public interest will not be affected, the ground for not interfering with the sale of the whistle is that the price to be paid for it is a matter of business judgment which should be left to the parties to the transaction. The power to regulate does not include the power to interfere *ad libutum* with company management, particularly in the matter of financing.

Commenting on this point, O'Dunne, Judge in the Maryland circuit court, said:

> "We have no such paternalism in government which undertakes to substitute the Public Service Commission as the board of directors of private business enterprises even of a quasi-public character, or of those charged with a public interest. Commissions are at best the legislature's sentinels posted in the public interest

* *Re* Mountain Grove Creamery, Ice & Elec. Co. *et al.* (Mo.) P.U.R.1926B, 351.

to prevent manifest public detriment, but it was never intended that private property, and such freedom to contract as still exists, and those rights which go, under the general caption of 'pursuit of happiness,' for the protection of which governments were ordained, should be subject to the administrative whims of legislative agencies ordained clearly for the protection of public interest, against manifest public detriment. There is a growing tendency among administrative boards and zoning commissions in the too sincere and zealous administration of their public functions, to assume there is committed to their delicate administrative discretion, the 'general welfare' of government which can be best promoted solely by a rigid adherence to the laws of the land amply elastic for the protection of life, liberty, and property, according to anciently established, and long continued, firmly recognized and adequately applied in the legal forums of the courts, with that sacred safeguard of the rights of one and all, by appeal to the court of last resort, to which all bow with the utmost confidence in its final arbitrament of all matters legal." *

THE ratepayers, therefore, seem to have no direct interest in preventing consolidation of utility companies merely on the ground that the holding company is paying too much for the whistle, as the price paid for the whistle is not the basis for rate making. There may be other questions of public policy involved in consolidations but we are now considering whether Commission refusal should be based solely on the ground that the operating companies are receiving and the holding company is paying too much for the whistle.

It has been shown that the price paid for the whistle has no direct bearing on rates. This does not mean that the ratepayers may not have an interest in the question of the price of the whistle. When Franklin paid too much for his toy he mourned over what he might have bought with the rest of his money. If a holding company pays too much for the whistle, does it tend to deprive itself of the ability to furnish adequate service through the operating company by impairing financial credit? It has been asserted that it may do so, and this is one of the grounds for vetoing consolidations at high prices. In the Maryland case already referred to, a witness made this statement:

"When there is a case of gross overcapitalization of a utility, requiring the payment of a fixed charge of this overcapitalization, there is an undoubted tendency on the part of any operator, I don't care who he is, of a property, in order to meet the inevitable fixed charge that is ahead of him or before him, to cut out, as far as possible, those things in the operation of a company which may not, for the time being, seem absolutely necessary, but which is a great contributing factor to the general service rendered to the public, and to that extent it affects the service to the public beyond a question." †

This is the argument of those who object to selling utility whistles at high prices, notwithstanding the fact that the amount paid has no direct bearing on rate making. In the same case the court answers these arguments as follows:

"It seems to me that there are two answers to this testimony:

* Electric Public Utilities Co. *v.* Public Service Comm. (Md.) P.U.R.1928E, 858.

† Electric Public Utilities Co. *v.* Public Service Comm. (Md.) P.U.R.1928E, 862.

"1. (a) That it is predicated on gross overcapitalization. (b) Where securities are issued against said gross overcapitalization and thereby become a fixed charge against the company—neither of which is shown by this record;

"2. That a complete answer to both, even if shown to exist, is that both rate and service are matters under the jurisdiction of the Commission, and that neither can the rate be increased nor the service diminished or impaired, but by its assent, and that, therefore, in neither case could it have the effect contended for, even if the factors alleged were present, actively operating, as an incentive to one or the other, or both."

WHEN one speaks of the public interest in consolidations at high prices, what is probably meant is the interest of ratepayers. The ratepayers' interest is limited to receiving good service at fair rates. That rates will not be affected by the price of the whistle is reasonably clear. The extent to which credit might be affected is a more speculative question and, therefore, more difficult to answer. Whether State Commission jurisdiction over service extends to the matter of financial credit which might affect the service of operating companies, or whether this is a matter of business policy within the discretion of the management of the companies, is a very nice question which has not yet been settled. The Commissions generally take the view that they have power to withhold consent on this ground, but there is as yet no sufficient body of court decisions in support of this view to make it at all certain that the Commissions will be sustained.

The only remaining part of the public affected by the high price of whistles is that represented by the stockholders of the holding companies; but it is the fear of the ratepayers rather than the fear of the stockholders which has thus far given rise to the criticism of the purchase of utility properties at high prices. Whether the security issues of holding companies should be regulated is a question of policy to be decided by the various states or the Federal Government if it turns out that these companies, as some persons think, can be deemed to be engaged in interstate commerce merely because their securities are sold throughout the Nation.

Not all of the states regulate the security issues of public utility companies, even in cases where they regulate rates and service. If a state had the power to regulate the security issues of a holding company, this would not necessarily require refusal to approve of consolidations at high prices, as the amount of the security issues of the holding company could be limited by the Commission to what

¶ *"If utilities are bought at too high a figure, a raise of rates is inevitable and when the rates are raised public relations will necessarily be made worse instead of better."*
—PUBLIC SERVICE COMMISSION OF INDIANA

it deemed to be the fair value of the property.

Let us now review briefly the Commissions' attitude on the sale of whistles at high prices.

THE New Hampshire Commission has held that upon the question of whether the transfer of a public utility is for the public good, the purchase price is immaterial, as the approval by the Commission of the transfer at the purchase price named cannot be taken as a basis for the issuance of securities or as a rate base.*

That the law, in so far as consolidations are concerned, does not make Public Service Commissions the managers of utility companies is a view which has been taken by the Missouri Commission. In one case it was said:

> "The purpose of the law in requiring the consent of the Commission to transfers of stock and property of public service corporations as involved in these cases is to protect the public. The law does not make the Public Service Commission the financial manager of public service corporations, nor does it empower them to substitute their judgment for that of the board of directors or stockholders of corporations subject to their regulation as to the wisdom of transactions to be had which are within the powers of the corporation." †

The Commissions, however, have often refused to allow purchases of utility property where they have considered that the price paid for the whistle would result in overcapitalization. In consolidation cases in New York, it has been held that the relation of the value of the constituent properties to the proposed capitalization of the new or consolidated company should be considered so that the Commission might act with understanding and, if necessary, disapprove of a consolidation plan providing large capitalization and relatively small property value.*

For this reason a holding company was not allowed to purchase the stock of a public utility by issuing four shares of its stock for each share of the utility stock unless the stock was worth four times the par value of the stock of the holding company.†

APPROVAL of the purchase of utility property has often been denied outright where property values were insufficient to cover the purchase price, the Commissions making no provision whatever for approval upon conditions relating to the treatment of the excess price. The New Hampshire Commission has said that no order can be made either upon an application for authority to sell utility properties at a specified price or upon an application by the purchaser to issue the same amount of securities in payment where the value of the property is not equal to that amount and there is no contract for a sale at a less price.††

THE Pennsylvania Commission was convinced in one case that approval should not be given where

* *Re* Hooksett Aqueduct Co. (N. H.) P.U.R.1918C, 389.

† *Re* Union Electric Light & Power Co. (Mo.) P.U.R.1924A, 74, 85.

* *Re* Palmyra Gas & E. Co. (2d Dist. N. Y.) P.U.R.1917E, 505.

† *Re* Northern Light & P. Co. (N. Y.) P.U.R.1924B, 813.

†† *Re* Grafton County Elec. L. & P. Co. (N. H.) P.U.R.1916E, 879.

the sale price was largely in excess of the fair value of the property.* The same Commission in another case said that it would not approve a contract providing for the sale of the property and interest in the right of way of an electric railway to a steam railroad in consideration of a certain amount of capital stock and bonds of the railroad company found to be in excess of the value of the property, under a constitution and statute prohibiting railroads from issuing stocks and bonds in excess of the value of the labor or property received therefor, though the completion of the construction and the operation of the proposed railroad would be of great benefit to the public.†

THE effect of the high cost of the whistle on financial credit has been considered in several cases. Thus, the Illinois Commission has refused to authorize the sale of utility property for $550,000 where the amount of permanent capitalization should not exceed $370,000, for the reason that the difference would create too great a burden of amortization.†† The Indiana Commission has held that a proposal to purchase and consolidate public utility plants should not be approved when the value of the property involved is insufficient to carry the burden of the obligations in the amount which would be necessary to cover the purchase. That such a consolidation should not be approved when the properties would not earn enough gross income to pay the fixed charges on the capital obligations.*

SOMETIMES transfers of utility property at high prices are permitted on condition that the excess be amortized out of earnings over a period of years. In an Illinois case it was held to be the duty of the Commission in passing upon such transfers to protect the interests of the public and the stockholders of the purchasing company against the building up of property and equipment accounts in excess of the value of the physical property actually transferred.†

IN a New Jersey case the difference between the value of four small electric plants to be consolidated with a larger one as found by the Commission and the value as found by the engineers of the utilities was transferred from the surplus account of the larger company to the amortization reserve account as a condition of consolidation.††

IN several cases the transfer of utility property at a sale price in excess of its fair value has been authorized only on condition that the excess price be amortized out of net income available for return, surplus, and contingencies, and that no portion of such excess should be charged to operating expenses or the capital account.¶

* *Re* Penn Public Service Corp. (Pa.) P.U.R.1926B, 791.
† *Re* McConnellsburg & Ft. L. R. Co. (Pa.) P.U.R.1917B, 457.
†† *Re* Southern Illinois Light & P. Co. (Ill.) P.U.R.1919D, 489.
* *Re* Indiana Elec. Corp. (Ind.) P.U.R. 1921E, 605.
† *Re* Stark County Power Co. (Ill.) P.U.R. 1918A, 224.
†† *Re* Atlantic City Electric Co. (N. J.) P.U.R.1925A, 352.
¶ *Re* Bell (Cal.) P.U.R.1916C, 135; *Re* Union Elec. Lt. & P. Co. (Mo.) P.U.R. 1924A, 74; *Re* Watts Engineering Co. (Mo.) P.U.R.1923E, 459; *Re* North Missouri Power Co. (Mo.) P.U.R.1925A, 545.

THUS it will be seen there appears to be a conflict of view among the Commissions as to their duty tc scrutinize the price of the whistle in consolidation cases, the weight of opinion being in favor of their right and obligation to do so. It is very doubtful, however, whether the courts will sustain the power of Commissions to veto consolidations otherwise unobjectionable, on the mere ground that the price paid for the property is too high, if the Commissions are acting only under general powers to regulate rates and service, or to disapprove of transfers of utility property not in the public interest.

Rates are not, as stated, directly affected by the sale price. Service can be affected only indirectly, that is to say only in so far as a high sale price may affect financial credit and thus impair the company's ability to maintain its plant and to make extensions. It is doubtful whether a Public Service Commission, however, has the power to interfere with company management in financial matters on the theory that a financial policy may be so unwise as to impair the company's obligation to render service. The kind of employees working for a public utility company may greatly affect the quality of service rendered but this would not give the Commissions the power to interfere with the discretion of the management in the selection of company employees.

It is hard to draw the boundary line where management ends and regulation begins, or vice versa; but there is a place for such a line.

WHETHER the Commissions have the right to disapprove of consolidations at a price beyond the value of the property, in so far as this may affect the value of security issues of the holding company, would depend upon the express language of the statutes defining the Commission powers. A state may forbid the issuance of securities of any kind of a company to an amount beyond the value of its property, but if a state has not done so, it would seem that it would be beyond the power of a State Commission to do so indirectly by forbidding a consolidation merely because of fear of an over issue of securities.

AS the law now stands, the power of State Commissions to withhold approval of consolidation merely on the ground of the high price of the whistle is extremely doubtful. How far a state can and how far it may be wise to interfere with the financial judgment of men who have the vision and enterprise to carry on great commercial undertakings are questions upon which there will always be a sharp difference of opinion.

When the High Cost of Stocks Affects the Ratepayer

"The ratepayers' interest is limited to receiving good service at fair rates. That rates will not be affected by the price of the property is reasonably clear. The extent to which credit might be effected is a more speculative question and, therefore, more difficult to answer."

Remarkable Remarks

HENRY FORD
Automobile manufacturer.

"Our national power system will become a unit, just as our postal system is."

M. E. TRACY
Editorial writer.

"Noninterest bearing bonds would be fine if a market could be found for them."

SAN FRANCISCO EXAMINER.

"Privately-owned utilities always do wish to capitalize the sky, the ocean, and the crater of Mt. Vesuvius."

BERNARR MACFADDEN
Physical culturist and publisher.

"If the power trust is vicious, its viciousness can be removed by governmental force."

IRVIN S. COBB
Author.

"With the possible exceptions of modern South America, the telephone service in the United States is the best and most complete in the world."

MARCUS A. WOLFF
Journalist.

"There is a growing suspicion on the part of some of the public that regulation is somewhat in the same category as prohibition—a 'noble experiment.'"

CHARLES W. NORRIS
U. S. Senator from Nebraska.

"Presumably every newspaper in the United States has had an opportunity to sell its interests to the power trusts."

H. C. HOPSON
Vice-president and treasurer, Associated Gas & Electric Co.

"Mass buying power by (public utility) holding companies has resulted in savings of nearly 2 per cent in gross earnings of operating companies."

HEYWOOD BROUN
Columnist.

"I've never seen a rediscount rated and don't know how it's done, altho I gather that some sort of dull, blunt instrument is necessary."

FLOYD W. PARSONS
Economist.

"Mergers do not always guarantee competent management. They do not always prove to be a short-cut to profits."

BERTRAND RUSSELL
British Socialist.

"I do not know whether Henry Ford has ever ridden in one of his own machines, but to have done so would certainly not have improved him at his job."

WESLEY C. MITCHELL
Director, National Bureau of Economic Research.

"Labor-saving machinery is also job-making machinery."

EDWARD N. HURLEY
Former chairman, Federal Trade Commission.

"I have little doubt that the next field for expansion of Government regulation will be exercised in the matter of limiting the production of oil and coal."

CLYDE M. REED
Governor of Kansas.

"We have found that state legislatures, State Commissions, and state supreme courts are only weak and futile gestures and that all power of final decision is lodged in the Federal judiciary."

ED HOWE
Retired newspaperman and philosopher.

"I herewith suggest a Reform so absurd it may sweep the country: a law requiring railway trains to come to a full stop at every road crossing, and a trainman sent ahead to flag his greasy locomotive and cars across."

DR. H. H. DALE
English scientist.

"Scientific progress is being seriously threatened by modern industry which drains away the best scientific minds from the universities and experimental laboratories into the field of commercial science, where they find higher financial rewards."

O. O. MCINTYRE
Newspaper columnist.

"Out of 50 jobs paying more than $25,000 yearly and filled within the last twelve months, 46 of those selected were awarded to men patronizing the best tailors and haberdasheries, and were known as 'swell dressers.'"

From the Report of the Dawes Commission on the financial policy of San Domingo.

"It is the experience of the world that public utilities are more efficiently administered and more economically operated by private interests than by Government operation, and the Commission is convinced that if these public utilities can be sold at a reasonable figure, a very large saving would result for the Government."

G. W. VANDERZEE
President, Wisconsin Utilities Association.

"We need make no apologies to anyone for conducting the publicity end of our business in the accepted manner used by nearly every large merchant. We are essentially merchants selling a needed service and are not mere producers of electricity, gas, and street car rides, which we have available if anyone wants to take the trouble to come and take them away from us. It is both essential and proper that we advertise what we have for sale and attempt thereby to stimulate its use, to the end that quantity production may reduce the cost to our customers."

The Public Uses and Private Abuses of the Holding Company

Can it be placed under proper control and be made to serve a real economic purpose?

By JOHN BAUER

WHAT is good, and what is bad, in the holding company? That it has been the instrumentality of an extraordinary economic development, there is no doubt. That many of its activities and practices have been properly subjected to public criticism, there also can be no doubt.

Is it justified as a form of organization?

Can the evils associated with it be eliminated by judicious regulation?

Can it be preserved as an institution for the development of desirable public policy?

These questions, of course, cannot be answered with any degree of finality. The answers depend, in part, upon personal experience and point of view. They cannot be based upon exact facts and conclusive analysis. No fair-minded person, however, could say that the holding company has not produced any public good, and that it has no economic justification. Nor can anyone conscientiously assert that it has worked satisfactorily in its various relations to the public interest. We may inquire, therefore, what have been its fundamental uses? And what are its evils?

And how should it be treated as to future public policy?

THE principal function of the holding company has been to serve as medium by which smaller companies and properties are brought together into larger systems, for more co-ordinated and more efficient operation and control. This use goes back about a half century. It first appeared with railroads, and achieved special prominence during the 1890's in connection with street railway consolidations.

In most of the cities, street railway franchises had been granted in small units to individual companies. In New York city, for example, there were literally hundreds of individual franchises, under which separate companies were organized, properties constructed and operated.

This small-unit system was originally based on the assumed desirability of competition, but resulted in disconnected and unsatisfactory service, high costs, and excessive rates. This experience led to successive combinations, which in some of the cities

reached the points of complete unification of street railway facilities. From a broad economic and financial standpoint, the consolidations were undoubtedly justified, but in many, if not most instances, they were based upon financial structures which could not stand against the forces of time. In some cases, the evil consequences reach down to the present day, and will affect conditions of transportation for the future.

PERHAPS the most striking instance of a successful holding company is that of the American Telephone & Telegraph Company.

In the telephone field, as in transportation, there were competing local companies, and experience demonstrated that local monopoly is essential to satisfactory service and reasonable rates. There was, further, the condition that the different communities required connections with each other, which could not be furnished by the disconnected local properties.

Under the conditions of the telephone business, a general monopolistic organization was a public necessity, to combine not only the properties within each community, but to link together all communities in a comprehensive system under the same management.

The American Telephone & Telegraph Company has served this purpose. It gradually acquired the capital stock of the local companies, made combinations of local units, and has bound them all into a number of large operating companies, each within a naturally-determined territorial district. It owns the capital stock of the operating subsidiaries, and mostly owns the long-distance lines required for toll service. It integrates the various functions, furnishes engineering, accounting, financial and managerial services for all the affiliated companies, and has progressively simplified the intercorporate and financial structures.

Fortunately, the telephone system was brought together principally before the war, and has been controlled mostly by people of large public-mindedness. It probably constitutes the most complete single monopoly in the country. In its development, it has avoided the worst evils from the public standpoint which have been commonly experienced in bringing together holding company systems. While, no doubt, some of its practices have been rightly subjected to public criticism, it probably stands today with less overcapitalization than any other large holding company group, and is less burdened by excessive costs imposed through the processes of consolidation or through over-reaching managements. It probably passes to the public a larger proportion of the economic advantages that flow from unification of public utility properties and operation.

UNFAVORABLE discussions of holding companies, and the broadcasting of dubious activities, have risen in recent years principally in connection with electric light and power. In this industry, again, the properties were built up originally under limited territorial franchises and in small operating units. While they were mostly constructed after the

The Good and the Evil Aspects of the Holding Company

ON THE CREDIT SIDE:

It has served as the medium of producing extensive consolidations, with the resultant improvement of service and economies of operation.

ON THE DEBIT SIDE:

It has brought about considerable overcapitalization and some unsound financial structures, including excessive fixed changes.

public doctrine of local competition in utilities had been abandoned, the operating units were too small for efficient production of electricity.

The industry has experienced extraordinary improvements in methods of production and transmission. A generation ago, maximum efficiency could be practically attained in a small city by an independent plant. There was neither advantage in large central station production, nor could current be transmitted, without great loss, from one community to another. The fundamental development during the past fifteen years has been the building of very large generating units, and the realization of cumulative economies with the increase in size of units. The result is that, today, a large central station of, say, 150,000-kilowatt capacity and upward, has such advantage in production as to render obsolete the smaller plants within the range of transmission. The famous Hell Gate station in New York city has just installed two turbo-generators with a capacity of 160,000 kilowatts each, and has a total station capacity of over 600,000 kilowatts. Its superior economy appears in practically all lines of cost—plant investment, maintenance, and, particularly, use of coal and labor, on the basis of large-scale output.

Simultaneously with this rapid evolution in production, there have been like improvements in transmission. High tension current can now be economically transmitted a distance of 300 miles, without excessive capital investment or undue line losses, on the basis of large-scale utilization. With both production and transmission developments, a central station system, if economically organized and managed, can now supply electricity for a number of municipalities cheaper than can be supplied by local and independent plants.

HERE is the underlying technological and economic justification for the holding company in the electric field. While the service rendered is wholly local as to use, and does not require inter-community connection, like the telephone service, it can be supplied more economically by an interconnected system. This has the advantages of large plant and organization, the combined demand of the connected territory, a better load factor, and lower costs per kilowatt hour delivered to the public. The extent of the territory which may be served

more economically through a connected system is constantly expanding.

On technological grounds, there is no justification today for an independent plant in any community, except in the largest cities or isolated communities. The properties, however, had been built up by independent community systems, so there has been the task of bringing them together under unified control and making the economic advantages of large-scale production and transmission attainable. This object has been rapidly achieved through the instrumentality of the holding company. The independent local plant has become increasingly rare. Numerous holding company systems have been developed, including holding companies of holding companies. No single company dominates, as in telephone service. Nor is there need for complete national unification. But there is still uneconomical sectional and company competition. Only in few instances is there complete sectional consolidation. Two or more groups frequently penetrate the same general area, and thus lose the full benefit of complete integration.

Systems, however, have been built up of sufficient size to make the practical economies of large-scale output available for the public, provided that the basis of the consolidations has been financially sound and that the operating policies are based primarily upon consideration of public utility, instead of private, profit.

To the credit side of the holding companies, there must be entered the fact that they have served as the medium of producing extensive consolidation. The amount of the credit must be determined with consideration to the vast difficulties of bringing together, under unified control, properties located in different communities and affected by numerous and divergent financial interests. Let any extreme critic attempt to establish a satisfactory consolidation of two properties in any two communities, both reconciling the local governments and consumers, and satisfying the bondholders and stockholders in the two properties!

This job has been accomplished between large numbers of communities. It has required great energy, clearness of mind in technological and human factors, cleverness in negotiation, skill in financial and corporate matters. No one who has done his job well, with proper regard for the public interest, will ever receive the amount of public credit that is due him in this enormous economic achievement of recent years. And there are many such persons, whose work is unknown to the public and their services unrecognized.

But there is a debit side to the account. And the offsets are not negligible.

First, there is the principal fact of overcapitalization and unsound financial structures. This condition prevails extensively in greater or less degree. In some instances, this cannot stand against future economic forces. Probably in most cases it will prevent the passing of the realized economies to the public in the form of better service and lower rates, as promptly as the public may reasonably expect.

Here is the fundamental cause of opposition to the holding companies.

The reason for this far too general condition is quite understandable, but that does not change the fact and its inherent financial unsoundness. Under the conditions that have prevailed, practically every step in the consolidation process has inevitably added over-capitalization and excessive fixed charges. This process has required the purchase of local properties, the acquisition of control of a group of such local properties, the further obtaining of control of several such groups, the bringing together such systems into a far-flung organization—then, the combining of such organizations, and the end is not yet!

Many were the steps in the process. Each was based upon purchase and sale—agreement upon price between purchaser and seller. The latter, owners of the local company in the first step, naturally would not sell unless they obtained a higher price than the property was worth to them as a local operating proposition. Furthermore, there were several bidders, each eager to obtain control of the local unit. The final price offered, therefore, was considerably greater than the amount on which the local owners could possibly hope to get a return. The securities issued by the purchasing company naturally covered the purchase price principally by bonds and preferred stock, plus such additions of no-par common stock as to absorb any profits from subsequent operation or sale.

SEVERAL such local properties or companies were thus purchased, each acquired at a higher figure than its local "fair value." Then the next step again involved negotiations over price; again there were competitive bidders; again more was paid than the property was inherently worth to the previous owners; the new securities issued again covered the purchase price, bonds, and preferred stock, plus nonpar common stock for the new owners.

So each step in the evolution inevitably produced increasing capitalization and fixed charges—to be supported, presumably, by the public through rates paid for service. The extent of the excess naturally depended in each instance upon the conservative or speculative disposition of the purchasers and their regard for public welfare and ultimate financial consequences. But the conservative and public spirited, unfortunately, were bidding against the less conservative and, sometimes, reckless. The sellers, moreover, were naturally inclined to look upon immediate price, and not upon ultimate economic forces and financial consequences. And the bidders were looking to resale and not to operation for profits.

¶ "No one really knows today whether the financial structures of the holding companies are unsound or not. In most instances that depends upon how the 'fair value' of the properties is compounded."

IN the rapid transformations in recent years, the fact has almost been lost sight of, in many instances, that these dealings have to do with fundamental utilities, with underlying public rights, and not with private property in ordinary industries. Whatever the form of organization or the unification of control, the earning power is subject to public control and may be limited to a fair return on the "fair value" of the properties employed in the public service.

The question is of grave future moment, whether the "fair value" is equal to the final prices paid and to the capitalization issued in the process of unification. If not, then manifestly the consolidation rests upon an unsound basis, and either will be subject to future disintegration, or will prevent the economies of large-scale organization from being passed on to the consumer in the form of lower rates.

To what extent the capitalization of the present holding company systems exceeds the properly determined "fair value" of the properties, if at all, no one can say with definiteness. This is certain, however, that insufficient regard has been given to this limiting factor which exists in the law as a matter of public policy for the protection of the consumers.

Why this condition? Partly because the opportunity of great profit has lured people into the reorganization and financing processes who had no understanding of the economic and legal character of the utilities or of the technological and managerial functions.

Too many promoters and speculators! The conservative, the intelligent, and the public spirited have struggled against difficult odds: the wonder is that the results are not worse than they are—if anyone really knows how bad or how good they are!

Perhaps the more fundamental explanation of the wide disregard of "fair value" as a limiting factor to earning power of the holding company systems is the uncertainty of "fair value" itself—its lack of precise definition and its indeterminateness as to any given property. The law has been too vague and uncertain. Allowance must be made for reproduction cost, overheads, and going value.

How much?

No one knows. Depreciation must be deducted—but upon what basis?

No one knows.

THESE factors are all extremely flexible. There may be a great difference between the "fair value" allowed for any particular property—depending upon point of view. This situation, naturally, appeals to speculative and promoters' impulses. If thought is given at all to "fair value," it is to fit the sum to the capitalization issued—by stretching the reproduction cost unit prices, expanding the overheads, by inflating the going value, and by compressing the depreciation. And why not—when there are no precise legal limitations, and when the "fair value" does not rest upon definite facts, exactly ascertained!

Perhaps no one really knows today whether the financial structures of the holding companies are unsound or not. In most instances that depends upon how the "fair value" of the

properties is compounded. It may be assumed, however, that public rights will not be grossly disregarded by the Commissions and courts, and that "fair value" will have substantial limitations in the economic realities, whatever they are! I surmise that overcapitalization has been considerable, and that it stands as an obstacle to satisfactory public dealings for the future. Its effect will be to retard rate reductions and to incite public discontent against the systems.

APART from the relation of capitalization to fair value, the financial structures which have been erected assume a degree of monopoly control and fixed conditions for the future which will probably not be realized. The consolidations probably extend mostly beyond their real justification.

For example: There has been no basic reason for the inclusion of the local distributing systems, which could well be owned and operated separately by local companies or municipalities. The fundamental service of the new organization is to hook-up huge central station production, and to provide transmission. Ultimately, this function does not require elaborate intercompany relations, and cannot be compelled to sustain pyramiding of fixed charges. The local distributing properties may be readily taken over by independent local companies or by municipalities, if excessive burdens are imposed by their inclusion in the holding company structure. Already, legislation to that end is being proposed in some of the states.

Moreover, overcapitalized central station production and transmission cannot avoid competition with local plants operated without the burden of excessive fixed charges. Technological progress is proceeding also along the line of small unit efficiency. There are now highly efficient small plants. With further developments, a local plant, with a local distributing system, all operated efficiently, without unnecessary overheads, will overcome the economies of central station hook-ups, if overcapitalized and burdened with excessive fixed charges.

There is a rapidly-growing consumer demand for electric rate reductions. The public feels that it has not been treated fairly. It has seen earnings go up and stock values skyrocketed, but has not gotten substantial reductions in rates. On the contrary, it has been confronted with special rate devices—the "service charge," or "initial charge"—calculated to place heavier burdens upon the smaller consumers. A safe prediction is that the high rates cannot stand against growing public pressure; that radical revisions downward are certain,—these adjustments, probably justified and already overdue, will finally endanger the financial structures of the overcapitalized systems.

THE chief holding company debit is a financial structure which may have difficulty in standing against normal economic forces. There are also minor charges. While large-scale organization has, theoretically, made available better technical services of all sorts—managerial, engineering, accounting, and financial, and research—in many instances their

importance has not made itself strikingly manifest compared with the costs imposed upon the local properties.

Perhaps these are extreme instances. Special positions are created, with large salaries, when the work consists more of anti-public activities than in improvement of service and lower costs for the public. High engineering, legal, and accounting fees are imposed, but upon close inquiry, the actual work consists principally of efforts to obtain high valuations before Commissions and courts, against the public, to keep rates up rather than to obtain better service and lower rates. Contracts are made between affiliated companies for construction and supplies, with the result of drawing disguised profits to the insiders, charged as investment or operating expense to the local companies. In most cases, probably no excessive intercompany charges are made. But glaring instances have come to light, and have stimulated public suspicion.

These dubious practices, where they appear, are largely forced upon local managements by outsiders—by nonresident, absentee owners—who have little or no investment in the properties. Their interest is to get what they can now, without regard to ultimate consequences to the actual investors and consumers, or to the institution of private ownership and operation. Their disregard of ordinary financial standards is responsible for the increasing criticism of private ownership and operation.

This almost lawless element does not include the great mass of actual operators,—the people who come directly in contact with the properties and the public served. It involves a small group of people, principally "clever" lawyers, ex-public officials, "consulting" engineers, renegade newspapermen, and financial buccaneers, who have violated their professional standards and betrayed the public trust imposed by their position in a public utility.

THESE things, of course, can be greatly exaggerated and their real significance distorted; but they are, nevertheless, realities with which the utilities are faced. They enter into and affect the entire situation. They will help to determine public opinion and future policies toward the holding companies. The small group has done the industry a vast amount of harm. This situation is best frankly faced by the industry and cleared up by the intelligent and public-spirited. Otherwise, private ownership and operation will have a difficult role, and the holding companies will be subject to "trust-busting" campaigns,—and public ownership will be stimulated.

FROM a constructive standpoint, the problem is an extremely difficult one. That the holding companies should be brought under public control, there can be no doubt. But whatever unsound financial structures exist, they cannot now be avoided without loss to investors or excessive rates to consumers.

For the future, more effective and financially sound regulation is necessary. Just what the standards and machinery of control should be, is not certain. To work out the problem on sound economic and public lines and to provide an administrative machin-

ery capable to cope effectively with conditions, is a complicated task. Numerous investigations are being made for that purpose. It is necessary to safeguard all reasonable private interests, establish sound and effective public control, and to preserve a form of organization which is well suited to the basic conditions of the industry.

Comprehensive revision of the prevailing system of regulation is necessary,—for the sake of public rights and to save the industry from its own "friends." The greatest difficulty has been the lack of clear policies and workable machinery of regulation.

Above everything else, the matter of "fair value" must be placed upon a definite basis, subject to exact and continuous determination. If the "fair value" of any property stands as a record beyond which no return can be obtained, then it will serve as a measure for purchase price. If more is paid, the public is protected. If the sum remains indefinite, naturally and inevitably that fact will continue to promote speculative activities in the holding company consolidations.

So far the holding company has not been subjected to state regulation. Twenty-five years ago, when regulation was first established, there was no particular reason for including the holding company. Conditions, however, have greatly changed, and the scope of regulation should be modified accordingly. The holding company now constitutes an integral part of the utility organization. It exercises control, performs many of the acts of operation, and is the ultimate management. It is properly brought within the system of regulation under present conditions.

The holding company is, I believe, a justifiable economic and legal agency, if properly controlled in the public interest. Naturally, it should be paid for its services, but it should be subjected to the same standards which have been applied to operating companies. The compensation should be based upon cost, reasonably determined, subject to public supervision.

Reasonable and liberal salaries should be allowed for large-scale management, but they should be of record and subject to approval by the Commissions before included in the operating expenses for rate making. All records of contracts, costs, profits, and returns should be subject to public scrutiny.

If regulation along the lines here suggested is obtained, the evils of the holding company systems can be largely eliminated. Existing financial structures will be difficult to deal with, but further piling up of unsound structures can be prevented. Unjustified contracts for services and property can be cancelled.

Regulation to such ends can be effected, if not too vigorously opposed by the industry. Successful opposition, however, may defeat the purposes of the opponents—by further promoting the ineffectiveness of regulation and by giving impetus to public ownership and operation.

My criticism of the holding company and the present system of regulation is not to destroy them and to replace them by an altogether different economic system, but to make them better instruments of public policy.

PUBLIC UTILITIES FORTNIGHTLY
MUNSEY BUILDING ✣ WASHINGTON, D. C.

October 3, 1929.

Dear Sir:

The state of Maine has voted against the export of surplus hydraulic electric power. Maine is said to be seventh among the states in developing water power and third in potential water power among the states east of the Rockies.

It has long been the policy of the state to keep this resource for home use. After a heated controversy the legislature passed an act permitting certain power companies to buy and sell surplus power out of the state, if authorized to do so by the Public Service Commission.

The Commission was to have power to fix the rates and to withdraw the export privilege if at any time the power was needed at home. For the right to sell this power a tax of 4 per cent of the gross revenue was imposed. A portion of the sum received from the export of power was to be used for rural electrification. During the progress of the debate the Bangor Commercial said:

> "All over the state from Kittery bridge to the upper reaches of Aroostook the atmosphere is rent by the shouts of the orators. Governors, present and past, are in the thick of the carnage; mayors, editors, attorneys, and representatives of the electric companies are in the thick of the carnage. The granges, service clubs, women's organizations may make choice from a plethora of speakers; the forensic din has become confusing."

The New York Times said it was a grand old campaign and that the cities were mostly for and the rural districts against export.

We do not know whether those who voted "against" were influenced by a desire to keep Maine resources for Maine or whether their objections were based on other grounds. If the measure was defeated because the voters regarded water power as the property of the people of Maine, and, therefore, to be kept for their sole use, then it is fortunate that not all of the natural resources of the country are located there, and could be kept for the sole use of the Maine folks.

We wonder if Maine gets any coal from Pennsylvania and whether Pennsylvania would be richer or poorer if it could keep its coal for the use of its own people. If the question whether the surplus coal of Pennsylvania should be exported could be settled by a referendum to the people of that state, it would be interesting to know what the result would be.

To an outsider it would seem that this action of Maine would discourage to some extent the development of its water power resources. If surplus energy cannot be exported a strong incentive for its development will be lacking.

Although the result of the referendum was against the export proposition, many thousands of voters favored it.

Yours very truly,

Henry C. Spurr

HCS:S

RECENT CHANGES IN

Utility Regulation Laws

New laws for the regulation of utilities were described in PUBLIC UTILITIES FORTNIGHTLY *for May 16, 1929. Since that date, other legislatures have adjourned after making some changes in the public utility laws. The tendency has been to extend the powers of the Commissions, as the summary of the new laws shows.*

BY ELLSWORTH NICHOLS

California

ONLY a few measures of any importance were passed by the legislature but a number of bills proposed affecting utilities in various ways were defeated.

Among the various bills affecting automobile transportation which failed to pass was a measure giving the Commission jurisdiction over sight-seeing busses wholly within cities, a measure generally revising the Auto Truck Act so as to certificate every class of truckmen operating upon the highways under various classes of certificates; a measure requiring all stages and trucks to procure licenses from each political subdivision through which they travel; a measure defining the term "public convenience and necessity;" and a measure entirely repealing all existing regulation of motor truck carriers.

Several bills were proposed affecting aircraft; one of them was a bill to make aircraft public carriers subject to the jurisdiction of the Commission, which was defeated. The only bill which was passed affecting aircraft was one which simply required that all aircraft and air pilots possess a Federal license.

The Public Utilities Act of California was amended in one important respect so as to require the Railroad Commission to consider the necessity of a transfer of properties of a public utility to a water storage district, and to determine the fair value of the property so transferred. The evil to be cured is alleged to be the organization of public districts by the owners of a public utility who wish to withdraw from their public service function and the unloading upon such newly formed district of the public utility properties at an unfair figure.

The only bill passed concerning automobile transportation was one entirely separating the automobile stages from automobile trucks. The former will now be controlled by the Public Utilities Act entirely, and the latter will be regulated by a separate act known as the Auto Truck Act.

Other legislation indirectly affect-

ing the Commission included a measure for placing the inspection of all dams for the impounding of water under the State Department of Engineering. Inspection of dams of hydroelectric companies has heretofore been vested in the Railroad Commission.

Connecticut

AMONG the laws passed by the legislature concerning public utilities there is an important enactment giving the Commission jurisdiction over taxicabs. Owners of taxicabs are included within the term "common carrier" and are required to obtain a certificate from the Public Utilities Commission.

Regulations are established concerning the display of certificates, registration of taxicabs, markers, and penalties. The Commission is authorized to make rules and regulations, to hold hearings, and to issue certificates as may be required under the provisions of the act.

Florida

THE state of Florida has followed the example of other states in enacting a Motor Transportation Act; this contains the usual provisions giving the Railroad Commission jurisdiction over the operators of motor vehicles upon public highways transporting persons or property for compensation as common carriers. There are excepted from the act motor vehicles used exclusively for transporting children to or from school and motor vehicles used for the transport of agricultural, horticultural, dairy, or other farm products from the point of production to the primary market. Transportation companies engaged in operating taxicabs or hotel busses between depots and hotels in the same town or city are also exempted.

The Commission is given power to determine the question of fact whether a motor vehicle is operating "between fixed termini or over a regular route;" to grant certificates for operation; to revoke, alter, or amend certificates; to regulate the assignment or transfer of certificates; to fix and determine the amount of an indemnity bond; and to supervise and regulate rates, classifications, service, and rules and regulations; to prescribe a uniform system and classification of accounts; and to require the filing of annual and other reports.

The Commission is directed to grant certificates only when the existing certificate holder or holders serving a territory fail to provide service and facilities to the satisfaction of the Commission.

Presumptions in favor of the Commission orders are made strong and the Commission is authorized to exercise all such judicial powers as may be necessary to enable it to enforce or perform any duty, power, or function conferred upon it by the act.

Other provisions relate to speed, detours, violations of law, the collection of a mileage tax, improper discrimination, and procedure.

Iowa

THE Iowa legislature has passed an act to provide for and to regulate the issue of shares of stock of corporations without nominal or par

value. Corporations, with certain exceptions, are authorized to create one or more classes of stock without any nominal or par value, with such rights, preferences, privileges, voting powers, limitations, restrictions, and qualifications thereon as are not inconsistent with law. Rules are established governing such issues.

Section 8737 of the Code of Iowa, 1927, provided certain limitations on public utilities securities to qualify them for investment by life insurance companies. The legislature has now liberalized the requirements, as it was felt that securities of many reputable companies could not meet them.

Whereas formerly bonds of utility corporations would be acceptable only if not more than 25 per cent of the gross revenue was derived from properties operating under franchises extending less than five years beyond the date of maturity of the bonds or under an indeterminate franchise, now, in lieu of this requirement, if the net earnings of the company have been at least two times the interest on the present mortgage indebtedness, for each of the three years preceding the date of the purchases, these bonds are acceptable.

Whereas originally bonds were acceptable for investment by life insurance companies only in the event of their net earnings averaging 1¾ times the interest charges on the total *funded* debt for five years preceding the date of purchase, now the bonds will be acceptable if the net earnings have averaged *twice* the interest charges on the total *mortgage* debt.

The *funded* debt of the company was originally required to be less than 60 per cent of the reasonable value of the properties as shown by the books of the corporation. Under the amended laws the bonds are acceptable if the *mortgage* debt does not exceed 55 per cent of the reasonable value of the property.

Bonds formerly were not accepted if the *funded* debt exceeded 70 per cent of the total value of the company's assets, while now the bonds will be accepted if the *mortgage* debt shall not exceed 55 per cent of the total value of the assets.

Massachusetts

THE Commission's bill respecting municipal lighting plants was finally enacted near the close of the Massachusetts session. Under the new law, if, when a town votes to establish a municipal lighting plant, any person or municipality was, at the time of the first vote on the question, engaged in generating or distributing gas or electricity for sale for lighting purposes in the town, the town may purchase of him, or it, at such price and on such terms as may be agreed upon, such portion of his or its plant and property within the limits of such town as the town desires for its use and as can be agreed upon, provided, however, that no such purchase shall be consummated by a city unless approved by vote of its city council, or of its commissioners if the city government consists of a commission, or by a town unless ratified by the voters at a town meeting.

Provision is made for appeal to the Department of Public Utilities in the event that an agreement is not reached within a designated period. The Department may then determine what

property should be included in the purchase and what price should be paid. The owner of the property and the municipality may then accept or reject the determination by the Department. Should the municipality reject, it will operate as a rescission of all votes theretofore passed for the establishment of a municipal lighting plant. Should the owner fail to accept, the town may proceed to construct or otherwise acquire a municipal plant without further attempt to acquire the plant of the owner.

By another law there is created an unpaid special commission to investigate and report on the question of control and conduct of public utilities in the commonwealth. Another unpaid special commission is created to investigate the question of abolishing grade crossings.

Of local interest is the Boston Elevated Bill, which, in effect, establishes a district including the whole area served by the Boston Elevated. It establishes an unpaid board of trustees and a district council.

Michigan

A BILL requiring gas and electric utilities to secure a certificate of convenience and necessity in certain cases, but excluding municipal corporations from the provisions of the act, has been adopted. The object is to prevent competition with existing utilities unless the Commission authorizes it.

Another law authorizes railroad corporations to engage in the business of transporting persons and property for hire upon the public highways and the business of aerial transportation; to own capital stock and securities of corporations organized for or engaged in such transportation; and to operate the property or any part or parts thereof of such corporations, and to enter into working arrangements with them.

A law has been passed regulating the business of carrying or transporting, buying, selling, or dealing in crude oil or petroleum or its products, through pipe lines; to authorize the use of public highways and the condemnation of private property; to regulate the purchase and storage of crude oil or petroleum; to provide for the control and regulation of all corporations, associations, and persons engaged in such business, by the Public Utilities Commission; and to define the powers and duties of the Commission in relation thereto. The Commission is given extensive powers including the right to make rules, regulations, and orders necessary to give effect to the provisions of the act.

The regulation of natural gas utilities is placed under the jurisdiction of the Commission. In this law provision is made for the conservation of natural gas resources.

Missouri

TWO new sections have been added to the legislation affecting railroads. One of these provides that any steam railroad company operating in the state may acquire, own, and operate motor vehicles for the purpose of carrying passengers or property, or both, for hire upon the highways in the same manner as individuals.

The other section grants to steam

railroad companies operating in the state the right to own and operate equipment designed for aerial transportation of persons or property or both in the same manner as individuals.

Several amendments have been made to the Missouri Bus Law. One of these changes the minimum license fee from $250 to $25.

New Hampshire

THE outstanding legislation enacted by the recent legislature in regard to public utilities provides that any public utility shall make, renew, or extend power contracts with another utility upon such terms and conditions as the Public Service Commission shall deem to be for the public good. The aim of this legislation is to assure utilities an opportunity to purchase power that otherwise might be diverted, for various reasons, to other channels. It has been pointed out that thereby the public will be insured against a purchase, by subsidiary companies, of energy at exorbitant prices, which prices are in turn passed on to the public through charges made by the subsidiary for energy distributed.

More effective supervision at less expense to the taxpayers is assured by the passage of another law which places the expense of an investigation by the Commission upon the utility. Previously the Commission could charge against the utility only the salaries of the regular employees of the Commission engaged in the investigation.

The Commission is given power by another enactment to require utilities exporting power to discontinue such business in whole or in part, to such extent and under such conditions as the Commission may find reasonable and for the public good.

The passage of another bill places further limitations on security issues, by requiring the approval of the Commission prior to the issuance of notes, bonds, or other evidence of indebtedness payable *less* than twelve months after the date thereof if an amount is to be issued exceeding 40 per cent of the par value of the outstanding capital stock. Notes for construction purposes may be issued under a general order from the Commission.

The most conspicuous railroad legislation was the passage of a bill whereby, when the Commission finds that the joint use of railroad lines, tracks, right of way, stations, equipment or facilities is for the public good, railroads may be required to use them jointly.

Aviation is placed under the regulation of the Commission by another statute. This body is vested with power to regulate flying and to license aircraft, airmen, and flying fields. Provision is also made for inspection.

Ohio

THE legislature has created within the Public Utilities Commission a division of investigation. A superintendent of this division is to be appointed to perform the duties of executive secretary of the Commission, which office is abolished.

The laws relating to public utility rates are revised, and it is provided that no rates or classifications of a

public utility shall become effective until the Commission by order shall determine the same to be just and reasonable. Public utilities must apply for authority to change rates. If the application is not for an increase, the Commission must permit the filing of the schedule and fix the time when it shall become effective.

If the application is for an increase in rates, exhibits must be filed showing a detailed inventory and appraisal of the property used and useful; a complete operating statement of the last fiscal year, showing revenues and expenditures; and a statement of the income and expense anticipated under the application filed.

Provision is made for the publication of the application, the filing of objections, and hearings by the Commission.

Provision is made for the handling of pending proceedings relating to rates and the refunding of patrons' payments under bonds or undertakings given by utility companies.

Pennsylvania

AN act providing for the revocation of the registration of motor vehicles and of operators' licenses where the car and the operator has been operating as a common carrier of passengers has been replaced by a new enactment which, in substance, makes the law applicable to common carriers of freight as well as passengers.

A new law deals with water power companies and provides that they are now authorized to do business only in the town, borough, city, or district where they are located, rather than generally without restriction as heretofore. A further provision requires that whenever they desire to branch out into new districts the approval of the Commission must be had.

The Propaganda against the Public Utilities

THERE *is much talk about trusts and combines, about attempts to mislead the public through biased propaganda. In all of this tirade the outstanding facts about our industry are lost sight of or else purposely left out—namely, that in each year since 1890, with the exception of the few years of the war period, the average price for electricity for home use has decreased. Today the average price throughout the United States is 25 per cent below prewar costs, while the general living cost is 70 per cent above that prevailing before the war. It might appear that there was a deliberate effort to camouflage the real situation in an attempt to create a favorable sentiment for Government ownership.*

—HOWARD PETT
PRESIDENT, MICHIGAN ELECTRIC LIGHT ASSOCIATION

What Others Think

More About Rate-Regulation on the Basis of Value of Service

PROFESSOR Philip Cabot, in the second part of a paper on "Public Utility Rate Regulation" published in the July issue of *Harvard Business Review* takes issue with the modern theory of public utility rate regulation—which is that rates, to be reasonable, should be based on the cost rather than the value of the service. He asserts that if the present method of rate regulation were long adhered to it might be harmful to the customers and to the community. He says:

> "This danger arises from the doctrine of service-at-cost, by which price is determined by cost allocations instead of by the value of the service to the customer. In order to avoid this danger, I suggested that the attempt to regulate profits directly be abandoned and that instead profits might be regulated indirectly, as they now are in competitive trade, through the skillful regulation of price."

Broadly speaking, declares Professor Cabot, it can be affirmed that in the long run a man's profits are the measure of his economic service to the community.

In this he is undoubtedly correct. No business can succeed in the long run unless it renders a valuable service. The fact that the utility business has grown to such tremendous proportions is positive proof that its rates never have been too high, measured by the value of the service to the public. A business cannot become great unless it gives more than it receives. Says Professor Cabot:

> "The supposed necessity for regulating the profits of public utility companies rests upon the dogma that Jones' profit is Smith's loss. But we all know that as a general proposition this is not true, but quite the opposite. It is more accurate to say that Jones' profit results from Smith's profit, for Smith will not buy of Jones unless he not only expects to make a profit from the trade, but does actually make one. If Smith's profit does not materialize, neither will Jones'; and it may also follow that any effort to limit Jones' profit will injure Smith and all other customers of Jones by discouraging him from continuing or extending his activities. It is true that if Jones has a monopoly of his product he may use it temporarily to injure all his customers, but his commercial life will be a short, though perhaps a merry one."

IT is Professor Cabot's belief that Commissions should regulate prices where necessary, rather than profits. This goes to the fundamental basis of proper rate regulation. There is nothing the Commissions themselves can do about it under the present state of the law because the states themselves are opposed to Professor Cabot's view in this matter. The Commissions are now bound by statutory requirement to determine the reasonableness of rates on the basis of the cost of the service rather than on its value. There is a marked difference of opinion as to which is the sounder method in the long run. Notwithstanding the fact that public utility companies are protected from competition by like companies in the same field, there is still plenty of competition in the utility field which would be a natural regulator of prices.

In this second part of his paper, Professor Cabot outlines what the method of procedure by the Commissions might be if his theory of rate making were adopted. As he states, his method of price regulation would not provide the regulators with an easy life. It would, however, eliminate the necessity of

valuing utility property. On this point Professor Cabot says:

"It will be noted that in the foregoing the cost, or value, of the company's property devoted to the public service has not been mentioned, and, so far as price regulation by a Commission is concerned, there is no reason why it should be. The price that will earn the maximum aggregate profit in the future is not determined by what has been paid in the past, when the buyer is a free agent. He neither knows nor cares what the goods cost the seller; he knows only what they are worth to him. The cost of a cotton mill has no influence on the price of sheets. And this is equally true in the public utility field, because this field also is truly competitive. For example, the fact that a street railway cost $100,000,000 to build in no way affects what the car riders will pay. When the price approaches 10 cents, substitution sets in; the volume of traffic falls and so do the profits. Many an investor in these securities knows to his sorrow that cost does not determine price. In practically the whole utility field the buyer is now a free agent, and no harm would result if this were assumed to be absolutely true and if the competitive method of price determination were applied. There are small areas like the field of domestic lighting (covering perhaps 20 per cent of the quantity sold) where the market will prove to be comparatively rigid; quantity will not vary greatly in response to price changes; in other words, substitution does not work freely. Here the competitive method must be applied with prudence, because where competition does not exist the method does not work. But these areas are small and can be identified easily.

And finally Professor Cabot says:

"To sum up, the ideal is to have large producers with long views which will lead them to seek maximum total and minimum unit profit; in short, managers who manage according to modern instead of medieval methods. To encourage such men and to eliminate the unfit, regulation of a highly intelligent character will be required." —D. L.

Some Lessons from the British Experiment in Railroad Consolidations

AN integral part of the British Railway Act of 1921 was the enforced consolidation of practically all of the companies into four large groups if the electrical lines operating almost purely for passenger traffic in the London area are excluded. A comparison of consolidation problems of railroad operation is compared to the American efforts in an article on the economic and financial results of "The British Railway Consolidation" by C. E. R. Sherrington in the *Harvard Business Review,* for July, 1929. After pointing out the means by which economies have been effected, the author says:

"Nevertheless, against such savings must be placed the loss of *esprit de corps* and *morale,* which consolidation necessarily brings about. This loss is admittedly an intangible but an extremely important one, which together with lack of personal touch has played a large part in the loss of traffic in Great Britain to the road competitor. From European experience one would have judged that for this reason alone, the Chicago, Milwaukee, St. Paul and Pacific would not have opposed the advent of the Great Northern Pacific Railway, as being calculated to disturb the remarkable *esprit de corps* and *morale* so evident to those with a knowledge of the two northern roads."

"The large size of a consolidated system is, sometimes, said to be beyond the powers of present-day organizations. To prove that such an argument is not valid, one need only point to the universally-recognized efficiency of the Canadian Pacific, the Canadian National Railways, the German Reichsbahn, the Pennsylvania Railroad, and the savings made by the two largest English lines during a year of very great difficulties. Size is no bar to efficiency, provided too great an emphasis is not laid upon centralization and if a good organization of the divisional type is adopted."

SUMMARIZING his observations on the few results of consolidation, the author says:

"In conclusion, one may stress the fact, which has emerged most forcibly from British experience, that the economies of consolidation as regards fixed assets and equipment are mainly to be attained through increased standardization, and require considerable capital expenditure.

They are productive of savings and an increased net revenue only after several years, and the full measure of economy in standardized rolling stock can be obtained in finality only after the life of the older stock has expired in, say, thirty years.

"Consolidation is a strong medicine, it is prone to create a temporary setback and local pains, due chiefly to loss of *morale*, unless handled with extreme care. Much has been said of late in hearings before the Interstate Commerce Commission of the need of systems balanced in power and financial strength; such arguments should carry no weight whatever. The trade of a country is not static, it rises and falls in different areas, as do industries themselves. Whatever may be the most careful plans of legislators, no prophecy will prevent a strong line from becoming a weak one if its volume of traffic decreases, but against such changes, ordained by the fates, it is possible for men at any rate to adopt consolidation as one means of spreading, as insurance does, the burdens of depressions in trade." —J. T. C.

The Next Step Ahead in Electrifying Our Steam Railroads

ELECTRIFICATION of our railroads is beginning to get out of its swaddling clothes and is about to walk about in boys' garments, is the opinion of Kent T. Healy, Assistant Professor of Transportation, Yale University, and former inspector and cost engineer of the New York, New Haven & Hartford Railroad, whose book "Electrification of Steam Railroads" is just off the presses.

This book is a technical treatise on the subject combining, as the publishers say, the description of the physical characteristics of the elements of electrification with the analysis of economic problems and the operating performance of both electrification and electric operation. Emphasis has been placed on power supply contracts, overhead distribution systems, and economic data as these elements have not been covered in detail in other works.

In his introduction to the subject the author says:

"Electrification of steam railroads has come as a recent development in the field of transportation. Like many other developments or inventions, its use in the developmental stages has been possible only to the wealthy. This was the case in the early days of automobiles, before standardization had come in to give the purchaser reasonably priced machines, the usefulness and value of which were assured. Only the rich could afford to pay the price and experiment with various types. Similarly, in electrification, with the lack of standardization and the uncertainties of the results of operation, only such conditions as traffic congestion in terminals, tunnels, and grades, exorbitant coal cost, or legal or industrial compulsion, where the alternatives were prohibitive in cost, have brought about the use of electric traction. During this period, electrification has been mainly an engineering problem of development, with experimentation as to systems, methods, and apparatus. Electrification is slowly getting out of this early stage, characteristic of any development, into a stable, standardized stage which must come before general application will be undertaken under ordinary conditions of transportation.

"This second stage is one of engineering refinement toward lowering costs, rather than development. Experience is being accumulated, refinements are being made, and reliable guarantees of performance are beginning to be possible."

The book contains a careful discussion of the practical problems of electrification from managerial, mechanical, and engineering standpoints. There is, for example, a chapter on power contracts in which the railroad and power company points of view are set forth together with the various considerations which enter into the making of such contracts. The author goes sufficiently into detail to give summaries or excerpts from actual contracts covering the subject. Separate chapters are devoted to the various technical problems and the concluding chapter of the book is on the "Organization of Personnel For Electric Operation."

ELECTRIFICATION OF STEAM RAILROADS. By Kent T. Healy, New York: McGraw-Hill Book Company, 1929.

The Battle of Men With Machines

THE pessimistic views of those who think that machinery is destroying the best in civilization and the optimistic views of those who can see nothing but good in the development of machinery are weighed and analyzed, and conclusions are drawn by Stuart Chase in his surprisingly interesting volume "Men and Machines."

The history, the anatomy, and the effect of machinery are treated from a new and human viewpoint; the reader is surprised by the readable story produced by the author, and built up about a subject which ordinarily seems technical and difficult to understand.

THE book opens with a picture of modern daily life and its constant contacts with all sorts of mechanisms—contacts that begin with the alarm clock that awakes the sleeper in the morning and end with the time when he dances to the strains of a machine which runs a steel needle over a corrugated rubber disc. In the interval he has inserted a piece of leather in the rollers of a piece of mechanism, moved it briskly up and down, and proceeded to scrape his face with it. He has turned various faucets and a mixing valve, and a nickel dial studded with little holes has showered him with water. He has used miscellaneous household appliances, has gone to the garage and by proper and sometimes prolonged manipulations started explosions in six cylinders of an internal combustion engine; has viewed steamboats on the river, steam shovels on a real estate development, a traveling crane on a coal dock, or a file of motor cars on the street. Various mechanical noises greet him as he steps into his office after being shot vertically towards the roof of the office building by a machine.

The magnified power of man when he uses machinery is brought forcibly to our attention by the example of magnifying the eye a million times by the use of the telescope; the picking up of the vibrations of a woman singing in another continent on the radio; the laying down of two hundred thousand words in the time it takes to write fifty words by hand. The author goes on:

> "With his back he can sustain perhaps one thousand pounds and carry half that weight for a short distance. With the electrical controls of a traveling crane he can lift four hundred and thirty tons and carry it as far as the mechanism extends. With his fist he can perhaps knock down a man; with a steam hammer he can crush a three-foot bar of steel as though it were soft clay. He picks up a stone and throws it a few hundred feet at most; he presses a button on a siege gun and throws a ton of metal sixty miles."

THE history of machinery presents itself to us like a romance. We envisage the hydraulic machinery of the ancient Egyptians; their wheel and wagon; their crank drill; their levers and planes for lifting great monolithic blocks; and their water wheel. We are reminded that Aristotle mentions the lever and balance-weight, the beam scale, tongs, wedges, crank and axle, roller, wheel and pulley, pulley blocks, potter's wheel, catapult, and toothed wheel.

The beginnings of science in the middle ages, the invention of clocks, and the multitudinous mechanisms invented and constructed by Leonardo; the development of the steam engine; the industrial revolution in England; the iron age; the age of steam; the coal age; and the machine age,—all of these pass before us as we follow the author through his pages. Mass production and the great leap forward of industry from hand tending to the completely automatic are described, and the author clearly and interestingly shows the effect of this modern industrial growth upon the workers.

WHAT machines affect us generally to the greatest degree? The machines related to public utilities stand near the head of the list. After clocks and watches, Mr. Chase lists automo-

biles, locomotives, trolley cars, and boats. Then follow telephones, and a little lower down we come across electric lights—just ahead of those instruments of torture known as dentist drills.

The author has listed seventy odd machines, or "machine clusters," grouped according to their effect upon us as "behaving organisms," grouped according to their effect generally and their effect upon special groups of people. He then says:

> "We are, depending upon our jobs, continually seeing them, hearing them, smelling them, touching them, feeling them, steering them, riding upon them, oiling them, feeding them, and generally bumping into them. In the course of a year, about 50,000 of us are killed in the process of bumping, and some millions of us injured, but at the same time they save us an incalculable number of steps, and an incalculable amount of dull, hard work. Generally speaking, these same machines dominate all Western civilization. They are now proliferating in Japan; expanding in Russia, Turkey, even in China.
>
> "While it is impossible to count all the common machines, the list itself, including the items which can be counted, makes it evident that a tremendous mass of metal is forever around us. A wall, which grows higher every day. But that it imprisons the majority of us tightly is not even open to question. It certainly does not, and cannot, for decades to come. It is far too low a wall not to be readily jumped over. If my direct contact with machinery does not exceed two hours a day, the average for all my fellow countrymen is probably even less. For children and housewives it is most certainly less. For farmers, storekeepers, office workers (except typists and calculating machine operators), professional workers, and the bulk of unskilled construction and transportation workers, it is presumably about the same; leaving a higher ratio only in the case of factory employees, and certain groups, largely skilled, among the transportation, mine, and construction workers. If I am not psychologically undone by contact with my quota, it stands to reason that most people will not be undone. The evil effect, if any, must come in that relatively small fraction of the population which confronts machinery for two, five, eight hours a day —textile operatives, men on the assembly belt, locomotive firemen, taxicab drivers, derrickmen, steel workers. For the rest of us, contacts are casual and temporary. We are bound to no rigorous machine rhythm; we use a device as it serves our turn, only to drop it again."

AFTER a summary of the classes of contact with machinery we are informed that the fact of operating a powerful machine with full responsibility for its control, far from being a monotonous, depressing, soul-destroying job, is, as a rule, precisely the opposite. It tends to expand the ego, establish self-confidence, break down inhibitions, keep one out of a rut.

Among the vast array of improved activities coming from machines we are informed that the telephone, particularly on party lines, has done much to extend the area of gossip; that in respect to mating, we have matriculated from park benches to parked motors; that ladies who slept in the minor agony of curl papers night after night now get it over in the one great agony of a permanent wave; and that a new method has been invented to inculcate foreign languages by feeding the patient's subconscious process while he sleeps by means of earphones attached to a victrola. But

> "In respect to eating, we still sit at table and consume much the same sort of foods with the same implements. By virtue of machinery we have the priceless boon of the tin can, which gives us a greater variety of softer and less succulent material, but the process of eating itself is little changed. No machines grace the table, save an occasional electric toaster or coffee percolator; courses do not come smoking from the kitchen on endless belts; no automatic stokers displace knives and forks; and despite much talk at the annual conventions of learned chemical societies (moderately ridiculous talk it is), no synthetic laboratory mixtures have yet appeared in any quantity to atrophy the muscles of our jaws."

THE balance sheet is presented, showing on the one hand the effects of machinery which are manifestly good. Arrayed against these are the effects manifestly evil; and then we see the effects which have both good and evil. The author concludes:

> "The machine of itself brings certain dangers and certain benefits. To my mind the latter outweigh the former. The ma-

chine as currently utilized brings a whole train of additional dangers with no corresponding benefits, save a possible expansion in the invention rate. When the two black lists are added together, the dangers outweigh the benefits. If, however, current usage can be modified to give the machine the maximum chance to prove its worth, the scale comes heavily down on the plus side. Russia has a chance to apply such modification, but she has not much in the way of a technical plant to apply it upon. Other nations, particularly the United States, have the technical plant, but very little desire to modify it on the part of those who are in a position to bring about the necessary adjustments.

"But most important of all, granting all the will in the world, is a functional control possible; is the human brain capable of directing the billion horses so that they shall not constantly break into wild stampedes?"

—E. N.

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Current Trends in Street Railway Regulation

¶ *Here is a very entertaining analysis of the important developments in street railway regulation during the last twelve months as published in Public Utilities Reports.*

¶ *Besides pointing out the significance of these decisions, Mr. Welch makes some interesting inferences and observations on the trend of regulation as affecting this important industry.*

By FRANCIS X. WELCH

STREET railways have been under governmental regulation almost since their inception as a practical commercial enterprise. Born in an era of franchise wrangling and political maneuvering by its burly ancestor, the horse car business, this industry has grown and lived to run the gauntlet of all forms of regulation — open competition, franchise rate making, statutory rate making, and now Commission rate making.

But never in all of its forty years of active life has the street railway industry as a whole come upon more critical times. Never in all of its forty years of active life has the street railway industry's destiny become so bound up with and dependent upon efficient regulation. Today it is faced with the grave problem of adjusting itself to an automobile age. That adjustment means the abandonment and motorization of certain routes, speeding up, improving, and economizing existing traction service on other routes, courageous expansion, and in some cases the absorption of competitive bus lines. That it will succeed in this adjustment and arise triumphant and more prosperous from this crisis as it has done in past years from lesser pitfalls depends in great measure upon judicious regulation.

The industry must be protected from unwarranted motor competition until it completes this adjustment. That the majority of State Commissions recognize this truth is easily borne out by the decisions of the past twelve months showing the willingness of most of the regulatory bodies to play the role of Horatius at the bridge, providing the particular companies involved are willing to do their share in the way of adequate service at reasonable rates. The Commissions seem almost unanimously of the opinion that an established and stable industry can better serve public interests on a large scale, whether over steel rails or on rubber tires. Hence a large number of cases in which the

Commissions have refused to sacrifice to rate cutting, and, in some instances, to fly-by-night independent motor competition.

One indication of the current importance of regulation in the affairs of the street railway industry is the unusual amount of important decisions by the regulatory bodies and the courts reported since the middle of 1928 up to the present time. What other year records such important controversies as the Interborough and Dry Dock cases in New York city, the United Railways case in Baltimore, the consolidation proceedings in Washington, D. C., the franchise decision from Decatur, Georgia, the abandonment of service in Helena, Montana, and a host of other landmark developments of street railway regulation? This abnormal legal activity itself betrays a tensity in the regulatory atmosphere that might well be taken for a symptom of grave economic adjustment.

WHILE in point of general interest it is probably overshadowed by the Interborough decision, the victory of Decatur, Georgia, over the Georgia Power Company probably has a significance equal to the transit troubles of New York city. The city of Decatur decided to pave the streets in 1925. The railway company, operating under a 5-cent franchise, notified the city that unless it were relieved of the paving obligations, it would be willing to surrender its franchise. The city refused the offer. When the company attempted to make a formal surrender of franchise and tear up its tracks two months later, the city took steps to stop it by court action. The supreme court of Georgia, upholding the city, decided that the franchise was a valid contract from which the company could not be released. The fact that the contract may be unfavorable to the company did not, in the opinion of the court, make any difference.*

Another important decision unfavorable to a street railway company and involving also a franchise contract was registered during the past year by the highest court of Connecticut. The controversy arose when the city of Hartford sued to obtain specific performance of the franchise which it had granted to the Connecticut Street Railway Company. A provision of the contract required the payment of 2 per cent gross receipts earnings to the city as a "consideration" for its consent to said construction. Here again the court refused to interfere with the "bargain" which the utility had made with the city.

Both of these decisions plainly show how badly a street railway company may fare in the absence of Commission regulation or where Commission regulation has been prevented by a franchise agreement. It is quite likely that in both of these cases a Commission having power to do so would have dealt more liberally with the company. The courts, of course, were bound by the contractual obligations of the franchises which they were powerless to impair.

IN Illinois we find that Chicago has been having transit problems just as New York, Baltimore, and Washington. While this great metro-

* Georgia Power Co. *v.* Decatur, P.U.R. 1929B, 461.

politan metropolis has been rapidly expanding its residential section, its business sectors remain concentrated about "the Loop." The result is traffic congestion. With practically all transportation facilities loaded with workers bound for a common destination (very frequently over a common track), there is small wonder that Chicago has a staggering daily transportation problem.

On May 8, 1928, the Illinois Commission, in granting a certificate of convenience and necessity to an independent motor coach line to operate in a new residential section, held that a new and increasing population in a section of the city adjacent to an already overcrowded street-car system requires added transportation. This demand can best be met, according to the Commission, by a new and additional artery of transit such as an independent motor coach line direct to the business center over a route avoiding as much as possible congested traffic intersections. This holding was practically in answer to a rival suggestion of the Chicago Railways Company for authority to establish a feeder-bus system to take care of the increasing new business. The Commission pointed out that the addition of more street cars during rush hours to relieve overloading was impossible from the view of practical operation since the maximum of use was already being made of tracks at certain intersections. Added cars would only increase the congestion and add to the number of cars backed up because of inability to get across intersections.*

Re Chicago Motor Coach Co. P.U.R. 1928D, 656.

Since this decision the question of the jurisdiction of the Illinois Commission to award certificates to bus companies to operate over the streets of Chicago without the consent of the city has received serious attention. The latest word from the supreme court of the state on this matter would seem to be that the Commission has such jurisdiction. But more litigation is expected before the question is finally settled, especially in view of the present controversy over the renewal of the street railway company's franchise to operate in the city of Chicago.

PROBABLY the most interesting of all regulatory decisions affecting street railways during the past year concerns the Indianapolis Street Railway Company. Some time ago a certain group of patrons of the East Washington street line submitted a rather novel proposal to speed up service on that line. The idea was to apportion cars running along the route as nearly as possible into three equal groups. Each car in any group was to be marked with an emblem of its group such as a red diamond, a green oblong, or a black circle, designating the three respective groups. Then a post at each stop along the route was to be marked with one of such emblems in exact rotation. According to this plan, in order for anyone to get off at a red diamond stop, he would have to board a car bearing that emblem. If you were in a hurry, you might board a car bearing either of the other emblems and get off one stop either west or east of your own stop and walk the difference.

The Indiana Commission disapproved of the plan but the street railway company, in the interest of smooth public relations, asked permission of the Commission to take a referendum among its patrons. This was permitted and an election was conducted on a certain day. Out of a total of 4,645 votes cast, there was a majority against the skip-stop plan of 1,131.

This little incident in Indiana should be of special interest to street railway officials concerned with improving good public relations in their companies. If the Indianapolis Company had availed itself of the Commission's decision disapproving of this impractical skip-stop plan, the dissatisfied advocates of the plan might very likely have preached the gospel of discord among the other patrons. Now there can be no doubt of the result and the company is relieved of any responsibility.

A POINT that has probably received more attention than any other during the past year in the regulation of street railways is the so-called "point of diminishing return." There are instances where some utilities have been unable to earn a fair return no matter how much their rates may be increased. As one Commissioner put it: "The Commission can regulate rates but it cannot regulate the law of economics." This has unfortunately been true in the case of certain street railway companies. In many instances the companies, themselves, have recognized this point and have refused to ask for rate increases that would give them, on paper at least, more revenue.

The Louisiana Commission, this thought in mind, refused to allow a straight cash fare of 10 cents proposed by the Shreveport Railway.

To utilities in such a situation a rate increase might often do more harm than good, decreasing the revenue yet available by driving away the consumers continuing to take the service. Such a utility is sometimes said to have reached the "point of diminishing return." This simply means the inability of the particular business, utility, or otherwise, to cope with adverse economic conditions.

In some states the Commissions have left the question whether or not the point of diminishing return has been reached with the utility's management. The reason justifying this policy is that the managers of the utility would be the first to know whether a rate increase would do it any good and would be the last to ask for it if it would do it any harm. As long as a utility can prove its inability to make a fair return on existing rates, such Commissions will grant rate increases as a matter of right. Whether the increase is economically ill-advised is up to the company's good sense.

IN other states, however, the Commissions have a different policy. Public service is so important to the public that its continuance should not be jeopardized by ill-advised although well-meant rate experiments. Such has been the policy, for example, of the Maryland Commission. In the rather well-known proceeding of the Baltimore Street Railway for a 10-cent fare, the Maryland Commission practically said to the utility:

"If your business were in a good healthy condition, no doubt you would be entitled to an 8 per cent return, but you can't have 8 per cent no matter what rate you charge. We have studied your business and find that the most you can make and still keep your remaining business intact is about 6.26 per cent. If we let you charge a 10-cent fare, you will ruin what is left of it by driving away those who still use the service. If you once ruin it, we may have to let you discontinue it. Therefore, we will not let you ruin it, but instead, we order you to modify your increase to produce about 6.26 per cent."

The Maryland court of appeals sustained this view of the Commission after it had been reversed by an intermediate court.

In this proceeding,* Chairman West, of the Maryland Commission, made a statement that the day of street car riding for pleasure is gone forever, and further stated that no street railway company in the eastern United States was known to be earning much if any more than 6 per cent return.

There have been other cases where a street car company, among other things, was required by its franchise to pave the entire roadway, sprinkle streets, build drains, bridges, fences, and to install electric lights, but Baltimore appears to be the only city which gives the street car riders the honor of maintaining its parks. Since this tax was imposed by the legislature the Commission was unable to grant any relief from it.

The net result of the Baltimore company's fight for a 10-cent fare might properly be summarized as a draw, the company losing its contention that an 8 per cent return was necessary but succeeding in its plea for more liberal valuation than that allowed by the Commission. The increased valuation was effected when the highest court, in reversing the Commission, decided that depreciation should be based on reproduction cost value rather than original cost. Other states disagreed with this holding.

IN Maine, a petition of the Portland Railway Company to operate motor busses as substitute service on certain portions of a street railway system was dismissed. The Maine Commission ruled that before authorization of the abandonment of a portion of a city's track system is given, necessity for such measure must be substantiated by evidence showing that all reasonable measures have been exhausted which might preserve rail service and that there are no other lines less remunerative and less to be desired from a practical economic viewpoint.

Speaking of abandonment, the petition of the Helena Electric Railway Company to abandon its entire transportation service in the city of Helena, Montana, which was approved by the Commission of that state, is of considerable importance. The Commission held that to compel a street railway company to operate a system at a loss or to give up its salvage value would be to take its property without just compensation, which is a part of due process of law.

In somewhat of a different spirit

* *Re* United R. & Electric Co. P.U.R. 1928C, 604.

Here Are Three Conclusions from a Study of a Year of Street Railway Regulation:

"There seems to be a marked tendency on the part of the Commissions to shield street railways from unwarranted competition by motor carriers."

"Companies situated in states having full powered regulatory Commissions seem to have fared much better than those subject to direct legislative control."

"Regulatory bodies have proven universally sympathetic with the current difficulties of street railway companies and are aiding them whenever possible in their struggle to adjust themselves to the age of the automobile."

from the Decatur, Georgia, case already mentioned, the Montana Commission ruled that the terms of an original franchise continuing to govern the use of streets by a railway company did not give rise to any obligation on the part of the company to operate its system at a loss where there was nothing in the franchise but a permissive charter. The Commission moreover refused to direct the abandoning company to repave or or even to resurface the streets, after moving its tracks, to conform with the rest of the street area, but permitted the utility to withdraw its property upon leaving the streets, avenues, and highways in a reasonably good condition of repair.

From New Jersey comes a ruling by the Board of that state that the law does not authorize it to order the installation of additional equipment by street railways, such as the maintenance of a waiting room or terminal unless the business and revenues justify the expenditure for such purpose.

THANKS to a decision of the United States Supreme Court, the nickel fare in New York city appears safe for a while. The facts of this case are quite complicated. The Interborough Rapid Transit Company operates both elevated and subway lines in the city of New York. The subways were built at different times under three contracts between the city and the Interborough Company. These contracts all provided for 5-cent fare but two of them were executed before 1902 and the third in 1913. The original Public Service Commission Law requiring the Commission to fix reasonable utility rates was passed in 1907.

It was the contention of the companies that the Public Service Commission Law abrogated the 5-cent provision in the subway contracts and required the Commission to fix reasonable railway fares, but the Transit Commission, on the other hand, took the position that it had no authority to change the contract rate. The Supreme Court held that the company should have first exhausted the remedy provided by the New York laws and that Federal aid could not be invoked unless it were shown

that the Commission had taken or was about to take some improper action with respect to the application of the company for increased rates.

What appears to be the principal topic of discussion now is, what will finally be done about the transit problem in New York city? Is the convenience of the nickel fare worth putting the balance on a tax bill? This is Father Knickerbocker's big question. Anyway it is all very pleasant for visitors to the city.

Before leaving New York state mention should also be made of the move by the surface lines in New York city for a 7-cent fare. The filed tariffs were rejected by the Transit Commission as illegal. This was regarded as practically a test case for the surface lines in their fight to obtain fare increases.

FROM Pennsylvania came an important ruling by the Commission of that state that the question of what line or portion of line a transportation company should abandon primarily belongs to the company, and unless the judgment of the management conflicts with public welfare, the Commission is not justified in setting it aside.

The Pennsylvania Commission also refused to determine the conditions upon which a street railway's striking employees should return to work. As a result of this important ruling a complaint against discontinuance of street railway service was dismissed for lack of jurisdiction where the utility showed that it was unable to operate its cars by reason of the failure of striking employees to return to work.

In South Carolina, the United States Circuit Court of Appeals ruled that a street railway company was in the same position as a railroad as far as provisions of the Federal Bankruptcy Act were concerned. This act forbids railroads to take advantage of the act. According to the courts, to compel the winding up, with summary methods contemplating in bankruptcy, of the affairs of a street railway company would cause great financial loss to creditors and serious inconvenience to the public by reason of the cessation of service.

BESIDES the above cases there were important rate victories for street railway companies in Minnesota, Missouri, Pennsylvania, Tennessee, and Wisconsin. The United Railways Companies of St. Louis were particularly successful in their rate petition involving a valuation of properties at $66,000,000.

Summarizing these decisions, there seems to be a marked tendency on the part of the Commissions to shield street railways from unwarranted competition by motor carriers. Furthermore, companies situated in states having full powered regulatory Commissions seem to have fared much better than those subject to direct legislative control. Finally, there is a tendency on the part of some Commissions to limit earnings of street railway companies to a point below that of "diminishing return." Regulatory bodies have proven universally sympathetic with the current difficulties of street railway companies and are aiding them whenever possible in their struggle to adjust themselves to the age of the automobile.

"That Reminds Me——"

First Aids to the Railway Man Who Is Unexpectedly Called Upon for a Speech

CONDUCTOR: "Can't you see the sign, 'No Smoking'?"

PASSENGER: "Sure, that's plain enough. But there are so many dippy signs here. One says, 'Wear Brown's Corsets.' So I ain't paying attention at any of them!"

The train suddenly came to a grinding stop, which made the passengers jump. "What has happened, conductor?" cried a nervous old lady.

"Nothing much, we just ran over a cow."

"Why—was it on the track?"

"No, we chased it into a barn!"—*Colgate Banter.*

A man was walking along the railway tracks and passed another going the other way.

"I am looking for the president of this road," said the first man. "Do you know where I will find him?"

"Well," replied the other, "you are on his tracks."

SHE: "E's so romantic! Whenever he speaks to me he always starts, 'Fair lady.'"

HE: "Oh, that's from force of habit. He used to be a street car conductor."—*Memphis Tri-Service News.*

Hingsten, much in love with his girl friend, entered a crowded street car one night.

"Do you think we can squeeze in here?" he asked, looking at her blushing face.

"Don't you think, dear, we had better wait until we get home?" was her embarrassed reply.

"Now that your little boy is going to school," cooed the persuasive book agent, "you should buy him an encyclopedia."

"Nothing doing," replied Mrs. Brown, "let the little rascal walk or ride the street cars the way I did."—*Courtesy and Service.*

The street car conductor's change was running short. A young mother, with her baby in her lap, handed him a half dollar.

CONDUCTOR: "Is that the smallest you've got?"

YOUNG MOTHER: "Well, I've only been married a year."

LADY—Conductor where do I transfer?

CONDUCTOR—Where are you going, please?

LADY—None of your business where I'm going!—*Louisville Trolley Topics.*

CONDUCTOR: How old is your little boy?

FOND MOTHER: Four.

CONDUCTOR: How old are you, my little man?

BOY: Four.

CONDUCTOR: Well, I'll ride him free this time, but when he grows up he'll be either a liar or a giant.

FLIP: What is the difference between a trolley car and an orchestra?

FLOP: I donno.

FLIP: A trolley car is run by a motorman and an orchestra by a conductor.

"Have you a town car?"

"Yes, three of them."

"What kind?"

"Uptown, downtown, and crosstown."

EPH: "How'd you git along ridin' in them thar sleeping cars when you took your trip?"

SIM: "Got along all right but I caught a colored feller tryin' to sneak away my boots an' made 'him bring 'em right back."

"What has become of the locomotive and train of cars I gave you for Christmas?" asked father.

"All smashed up," replied the boy. "We have been playing government ownership."—*The Kablegram.*

The express had not been living up to its reputation. First it would go forward fifty yards or so, then back, then stand still, puffing uncertainly, and then begin the same things all over again. At last one of the travelers called the British guard.

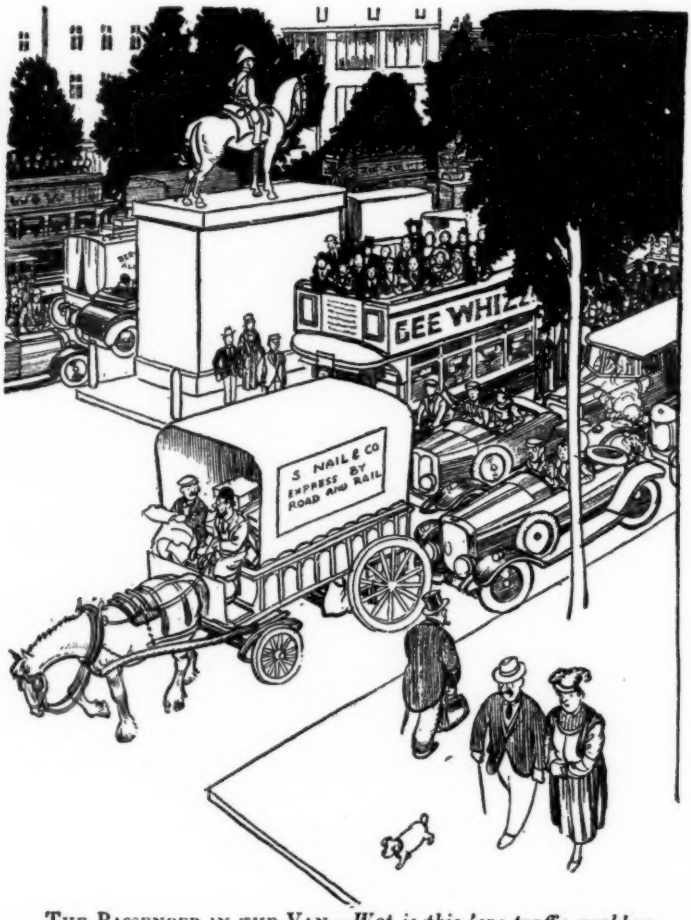
"What's the matter with this train?" he demanded. "Backing up and jerking forward in this way."

"It's quite all right, sir," the guard assured him. "I think the engine driver is teaching his wife to drive."

A green brakeman on a mountain railroad was making his first trip up. They were going up a very steep grade, and with unusual difficulty the engineer succeeded in reaching the top. At the station, looking out of his cab, the engineer saw the new brakeman, and with a sigh of relief, said:

"I tell you, my lad, we had a job getting up here, didn't we?"

"You bet your life!" said the new brakeman. "And if I hadn't put on the brakes when we started we'd have slipped back."



THE PASSENGER IN THE VAN—*Wot is this 'ere traffic problem the papers is always gassin' about, Bill?* —HUMORIST

The March of Events

Glacier Park Convention

Enlargement of Federal Jurisdiction and Other Topics Discussed by State Commissions

THE Forty-first Annual Convention of the National Association of Railroad and Utilities Commissioners held a very interesting and successful meeting in Glacier Park, Montana, on August 27, 28, 29, and 30, 1929. A year ago some of the members of the Association were fearful that on account of the time of year and the distance from the Atlantic Seaboard of the meeting place, the Glacier Park convention might not be well attended. These apprehensions were entirely groundless for the result showed the largest attendance of any convention ever held by the Association. The registration disclosed about 300 delegates, relatives, and guests—100 more than the previous record.

It was a source of regret to all of the delegates that Hon. Lewis E. Gettle, president of the Association, was unable to attend on account of his health. The first vice-president, Hon. Charles Webster, of Iowa, presided in his place.

The Association was the guest of the Board of Railroad Commissioners of Montana, consisting of Lee Dennis, Chairman, Daniel Boyle and Leonard Young, Commissioners. Never were more perfect arrangements made for the convention and never was the program of entertainment more satisfactory than the Montana Commission offered. Mr. Dennis welcomed the convention on the first day in an address which bristled with information as to the resources and attractions of the great state of Montana. His welcome was seconded by an address by Hon. Frank Hazelbaker, Lieutenant Governor of Montana, speaking for Governor Erickson, who was unable to be present on the opening day. Later in the session, however, Governor Erickson delivered an address.

FOR the first time in the history of the Association music had its place on the official program. Miss Hazel McLaughlin, cashier of the Montana Commission, who has a most sympathetic and appealing voice, sang several selections, and a male quartet of the Montana Power Company supplemented her efforts. The delegates received this innovation most enthusiastically and insisted upon numerous encores. The result was that each session was either opened or closed with music.

Out of 47 states having regulating Commissions, the roll call showed 38 represented. On account of the attractiveness of the meeting place, many of the delegates were accompanied by their wives and families.

Among the delegates present were three members of the Interstate Commerce Commission, namely, Hon. E. I. Lewis, Chairman, Hon. Frank McManamy and Hon. Claude R. Porter, members. Chairman Lewis entertained the convention at one of the evening sessions by an address upon the development of transportation in the United States, illustrated by moving pictures. Commissioner Frank McManamy contributed a very interesting and valuable report from the Committee on Railroad Grade Crossings, Elimination and Protection.

THE question of the enlargement of Federal jurisdiction at the expense of the states was made the subject of a round table discussion. Hon. Adolph Kanneberg, of the Wisconsin Commission, presided and addresses were made by Hon. Carl D. Jackson, former president of the Association, Mr. William Haganagh, a prominent utility man of Chicago connected with the Byllesby Engineering Company, and others.

The convention was notable in the number and character of the special addresses delivered. Hon. Clyde M. Reed, Governor of Kansas, favored the convention with an exceedingly interesting address upon the condition of state regulation throughout the country. Mr. Ralph Budd, president of the Great Northern Railway Company, made a distinct contribution to transportation history with a very able paper upon the development of the Great Northern Railroad and other transcontinental railway lines. Mr. Marcus A. Wolff, editor of the *Evening News* of Newark, New Jersey, greatly interested the delegates with his speech on regulation from a newspaper standpoint. Major General John F. O'Ryan, former member of the Transit

Commission of New York city, spoke for nearly an hour on the development of aviation. Hon. George R. Lunn, member of the New York Public Service Commission, made an eloquent and interesting address, wholly extemporaneous, upon the alleged breakdown of public service regulation in the state of New York. Mr. William S. Leffler, of Lacombe and Leffler, engineers of New York city, aroused general interest with his address, illustrated by charts, entitled "A Study of Prices for Domestic Electric Service." Brief addresses also were delivered by Mr. E. S. Wilson, vice-president of the American Telephone & Telegraph Company, Hon. Alexander Forward, managing director of the American Gas Association, Mr. Mullaney, president of the same Association, Mr. S. E. Markel, of the bus division of the American Automobile Association, and other representatives of the great public utility organizations of the country.

THE reports of standing and special committees were exceptionally interesting. Hon. Paul A. Walker, special counsel of the Oklahoma Commission, presented the report of the committee on Co-operation between Federal and State Commissions. Hon. Claude L. Draper, of Wyoming, offered the report from the Committee on Railroad Rates. Hon. Fred P. Woodruff, of Iowa, presented the report of the Committee on Valuation. Commissioner McManamy, of the Interstate Commerce Commission, read the report from the Committee on Railroad Grade Crossings, Elimination and Protection. Mr. Shaw, of Vermont, presented the report of the Committee on Public Utility Rates, and Hon. Frank P. Morgan, of Alabama, led the discussion. The general solicitor of the Association, Hon. John E. Benton, presented the report of the Special Committee on Motor Vehicle Legislation and Hon. Amos A. Betts, of Arizona (he was not present) contributed a very able report on Motor Vehicle Transportation. Hon. Fay Harding, of North Dakota, submitted the first report from the Special Committee on Air Transportation Regulation.

One of the masterpieces of the convention was the report from the Committee on the Generation and Distribution of Electric Power, presented by its Chairman, Hon. Adolph Kanneberg, of Wisconsin. Mr. Kanneberg never does things by halves and in this report he gave the convention a most comprehensive description of the hydroelectric development of the country. Other reports presented were from the Committees on Intercorporate Relations, Hon. John F. Shaughnessy, of Nevada, Chairman; Uniform Regulatory Laws, Mr. Philip H. Porter, of Wisconsin, Chairman; Special Committee on Depreciation, Mr. W. M. Hammond, of Illinois, Chairman; Service of Public Utility Companies, Hon. Thomas E. McKay, of Utah, Chairman; Statistics and Accounts of Railroad Companies, Mr. L. R. Bitney, of Minnesota, Chairman; Publication of Commissions' Decisions, Mr. James B. Walker, of New York, Chairman.

ALL delegates and guests were enthusiastic over the program of entertainment provided by the Board of Railroad Commissioners of Montana, the Great Northern Railway, and the transportation and hotel companies of Glacier National Park. Not a day passed without some kind of special entertainment. In the evenings there were Indian dances at Many Glaciers Hotel, where the convention was held. The Black Feet Indians were present in their picturesque costumes and entertained the visitors with characteristic ceremonies. On one evening, Hon. Charles Webster, of Iowa, president, and Hon. Harvey H. Hannah, of Tennessee, first vice-president, were inducted into the Black Feet tribe. The Chief who performed the ceremony was Two Guns White Calf, a full blooded Indian whose well-known profile is found upon the nickel coins of the United States. Mr. Webster, who comes from the corn growing state of Iowa, was given an Indian name which translated means "Chief Tall Corn." Mr. Hannah, who has a wealth of glossy black hair, was given a name which in English means "Chief Black Bull." Mrs. John E. Benton, the wife of the general solicitor of the Association, was also adopted by the tribe and given a name which signifies in English "Princess Elk Woman."

During and after the convention, the delegates and guests were treated to horseback and automobile rides over the wonderful trails and roads through Glacier National Park. One trip was made to the Prince of Wales Hotel in Waterton Lake Parks in Canada. This hotel is located just beyond the Canadian boundary and about seventy-five miles from Many Glaciers Hotel. Another trip was to St. Mary's Lake and Going to the Sun Mountain. Another trip was by motor cars up the shore of Lake McDonald and up McDonald river to Logan Pass, over the famous Logan Pass Trail. The automobile road recently completed is constructed mainly in the sides of high mountains and climbs several thousand feet in its course from Lake McDonald to Logan Pass. It afforded one of the grandest pieces of mountain scenery in the country.

OFFICERS of the Association for the ensuing year were elected as follows: Charles Webster, of Iowa, President; Harvey H. Hannah, of Tennessee, First Vice-President; John J. Murphy, of South Dakota, Second Vice-President; John E. Benton, General Solicitor; James B. Walker, Secretary; Clyde S. Bailey, Assistant General Solicitor and Assistant Secretary.

—JAMES B. WALKER

California

Sweeping Utility Rate Probe by Railroad Commission

WHAT is called by the newspapers "the most sweeping series of rate inquiries ever undertaken in California" was ordered by the Railroad Commission on August 29th. The charges of the Los Angeles Gas & Electric Corporation, Southern Counties Gas Company, Associated Telephone Company, Roseville Telephone Company, and Modesto Gas Company are now to pass under the scrutiny of the regulating body. The rates of the Pacific Gas & Electric Company and the Great Western Power Company were already under investigation as a result of a similar order.

The Commission's order was the result of recent hearings conducted by the Commission on orders to twenty gas, electric, and telephone companies to show cause why their rates should not be investigated on the ground that their earnings are excessive. The Commission's action is taken to mean that the utilities failed to give satisfactory explanations of their earnings.

The companies cited have about 500,000 consumers largely located in and about Los Angeles. The newspapers have been free in their prediction of a slash in rates. While the preliminary reports by Commission experts are merely the basis for the investigation, as the Commission is expected to determine the actual value and expenses of the utilities, the papers have already predicted rate cuts of $10,000,000 to $15,000,000 a year.

Hearings in the matter of rates charged by the Pacific Gas & Electric Company were started on August 27th and were adjourned to October 1st. A hearing on the rates of the Great Western Power Company was scheduled for October 2nd. Preliminary reports had indicated that the Pacific Gas & Electric Company was earning 8.86 per cent and the Great Western Power Company was earning more than the 7 per cent, which the Commission established as adequate in the case of the Southern California Edison Company.

District of Columbia

Traction Hearing Postponed

AN adjournment of the hearing in regard to local trolley fares was taken by the Commission on September 10th, to be resumed on October 7th. Important among the matters being considered, aside from the question of fares, are unification and merger.

The merger plan of the transportation companies submitted to the Commission and the Senate last year died in the Senate, and the traction companies have been reluctant to permit further discussion of unification or merger to hinder their plea for a 10-cent fare with four tickets for 30 cents. The Commission, however, has indicated that it wants to consider unification and merger of transportation facilities.

Louisiana

Can City Prevent One-man Car Operation?

THE question whether the city of Shreveport can lawfully interfere with the operation of one-man street cars was put up to E. Wayles Browne, special master, at a hearing in Federal Court on August 25th. The special master was to report his facts to Judge Ben C. Dawkins, who would render a decision on the law.

The Shreveport Railway Company attempted to show that the operation of two-man cars would mean virtually confiscation of the trolley system, and that an ordinance of the city requiring two-man cars is unconstitutional. Witnesses for the company included experts who testified to the financial condition of the system and also street car officials from other cities.

A similar controversy arose in Dayton, Ohio, a few years ago when an ordinance was passed requiring both motorman and conductor upon street cars. The Federal District Court held that the ordinance was unconstitutional because its purpose was to provide employment for a larger number of operators and only remotely for the purpose of promoting public health and safety.

Maine

Power Export Bill Meets Defeat at Polls

THE Maine voters on September 9th defeated the Smith-Carlton measure, which would have permitted the export of surplus power from the state. This action affirms the adherence of the voters to the principle of the Fernald Law under which, for the past twenty years, the export of hydroelectric power from the state has been prevented.

The export proposal was advocated and supported by Governor William Tudor Gardiner, former Governor Percival P. Baxter, the power companies, and others. Former Governor Ralph O. Brewster, who retired from office the first of this year, had opposed the measure in a speaking campaign through the state. Opposition was also massed against the export plan by several organizations in Maine.

Missouri

Holding Company Acquires Control of Traction System

THE City Utilities Company, a Delaware holding corporation, it is reported in the St. Louis *Post-Dispatch*, has acquired control of the St. Louis Public Service Company, which operates the local street railway system. It is said that the holding company has acquired 38½ per cent of the voting stock.

Commission authority to consummate this deal was granted last June after extensive hearings and over the protest of the city of St. Louis and a group of objecting stockholders. The Commission decision was appealed to the circuit court of Cole county, where it is now pending, but no further steps were taken to enjoin or suspend the carrying out of the sale of the stock.

The North American Company and the J. K. Newman interests control the City Utilities Company. Thus the St. Louis Street Railway Company for the second time finds itself under the jurisdiction of the North American Company, which owned it when it went into a receivership.

Nevada

Wholesale Rate to Utility Draws Attack

THE action of the Commission on August 24th in ordering a reduction in rates charged for power in Las Vegas was expected, according to the Reno *Journal*, to bring about a clash between the Consolidated Power & Telephone Company of Las Vegas and the Los Angeles & Salt Lake Railroad Company. The power company has been purchasing current from the railroad, and the latter concern has refused to reduce its wholesale rates. The Commission ordered the reduction on the ground that if the power company and the railroad company could not agree on a reduction, the power company could build its own plant and amortize it in a period of six years. The Commission intended that an independent generating plant be completed and ready for operation by September 1, 1930. Meanwhile the attitude of the railroad is a question of interest.

New Hampshire

Rate Protests Delay Lower Charges

THE Public Service Company of New Hampshire some time ago proposed revised schedules of gas rates which would result in reduction for the majority of business places and homes. The usual protests were filed but upon investigation of the schedules, the objections were withdrawn. Then the gas users started a move to obtain immediate approval of the new schedules as it became known that the Commission would

not hold a hearing until some time after the first of October. The Keene *Sentinel* tells us:

"Users of gas in Keene who would be benefited by the proposed rate changes began a study of the schedule submitted to the city government and becoming convinced that a hearing would only delay the effective date of such change it has been decided to ask the city government to rescind its action" (which was in opposition to the new schedule of rates).

New Jersey

Elizabeth Gas Rate Proposals Meet Opposition

ANOTHER gas rate controversy in New Jersey was started when the Elizabethtown Consolidated Gas Company filed a new schedule of rates with the Commission described by the company as merely a readjustment more equitably to distribute the charges among the consumers. City Attorney Edward Nugent was instructed, however, by the city council "to use every effort to prevent the proposed increase."

While the company points out that there is no increase in the amount of revenue to be derived under this schedule, officials opposing the new rate assert that it is designed to reduce the bills of large consumers at the expense of small consumers.

The bill for the consumption of 3,000 cubic feet of gas a month is the same under the old and new rates. Under the new rates those consuming less than this amount will have a slightly larger bill, while those consuming more will have a smaller bill.

New York

City Rates Less than Cost, Is Complaint

EFFORTS of the Niagara, Lockport & Ontario Power Company to compel the Jamestown city lighting plant to charge against its costs and rates the services and facilities furnished to the lighting plant by the taxpayers without charge have resulted in the granting of an order by the supreme court requiring the Public Service Commission to file its proceedings, orders, and evidence in that court. This would be followed by a review in the appellate division sitting in Albany, and possibly the court of appeals.

The utility company contends that the lighting plant, while showing a large annual paper profit, is actually serving at less than cost because it is not reimbursing the city for rental of property used, for services rendered it by various city officials whose salaries are paid by the taxpayers, for expenses of government which should be included in the tax rate, and for the use of the property devoted to public service. The Commission has held that it lacks jurisdiction to review the rate but the company, in its court proceedings, alleges that the Commission has jurisdiction.

Patrons Object to Rental of Pennsylvania Station

THE Association of Long Island Commuters and the Utility Consumers' League of New York city, through their attorney, Maurice Hotchner, have filed objections with the Interstate Commerce Commission against a proposed increase in rental to be paid by the Long Island Railroad for the use of a part of the Pennsylvania station in New York. The companies have petitioned the Commission for approval of a new rental agreement.

The brief covers both legal and financial grounds. It is contended, for one thing, that the Interstate Commerce Commission does not have jurisdiction because the use of the station is wholly a state matter. The Transit Commission, it appears, made an investigation of the joint use of the station and terminal in 1924 and then refused to approve the same agreement which is now under consideration by the Interstate Commerce Commission.

The financial aspect depends upon proper cost analysis with relation to requirements on the part of the two companies. The patrons contend that the proposed rental payment would be excessive and detrimental to ratepayers.

Public Utility Law Revision Sought by City Attorneys

At a session of corporation counsels and village attorneys in Albany on September 10th, ways and means of amending the Public Service Commission Law were considered. The complaint was made that the status of municipalities in relation to public utilities was not clearly defined, and that, particularly in regard to transportation problems, the cities had no power other than to make complaints.

Corporation Counsel Arthur J. Hilly, of New York, stated that in hearings before the Commission involving the question of rates for gas and electricity, the city of New York had not been allowed adequately to present the case on behalf of the consumers. Furthermore, he said that the city authorities were not in a position to know at any time whether or not there were reasonable grounds for a complaint against utility rates as the city did not get periodical reports of revenues and operating expenses or statements of income or of return on the reasonable investment. He believes that city and village attorneys should be permitted to participate fully in all hearings by the Commission.

A committee was appointed to suggest amendments to the law, which can be placed before the legislature in January, 1930.

Transit Commission Fare Order Attacked in Court

Michel Kirtland, receiver of the Eighth and Ninth Avenue Railway Company, on September 10th started suit in the supreme court to secure a review of an order of the Transit Commission denying the company authority to charge a 7-cent fare on its surface lines. He obtained an order from Justice Crain directing the Commission to file all proceedings relating to the fare application within twenty days.

Mr. Kirtland is quoted in the New York *Times* as stating that his company gave notice on July 16, 1928, that it would put the 7-cent fare into effect on August 20th of that year, but that the Transit Commission directed that the increased rates be withheld and in September began a series of hearings. The application was denied in August of this year. The receiver said there was no contradiction of evidence that the company, operating at 5 cents, has lost money since 1919 and that the stockholders had received nothing since 1918. He asserted that the company's property is valued at $10,000,000, and that more than 20,000,000 persons have been carried over its lines during the course of a year.

The grounds for review of the Commission's decision are that the company, by being prevented from charging the higher fare, is deprived of its property without due process of law, and that the rejection of evidence as to its loss under a 5-cent fare was illegal.

North Carolina

Asheville Answers Higher Phone Rate Plea

An answer was filed by the city of Asheville on August 31st asking that the petition of the Southern Bell Telephone & Telegraph Company for a revision in exchange telephone rates be denied. The city contends that the present rates are a full measure of the value or worth of the service and are yielding a reasonable return on the reasonable value of the Asheville exchange property. There is criticism of the apportionment of revenues between the local exchange service and the long-distance telephone service.

In addition to the question of reasonable rates generally, the Commission is faced with the problem of solving the rate question for certain areas which have been added to the city. The company desires to charge rates based upon the distance from the exchange. Under this system telephone users in the outside areas would pay more than those residing within the old city limits.

Ohio

Voters to Get New Gas Rate Proposal

THE Columbus city council, at a special meeting on August 27th, ordered a 48-cent rate ordinance drawn so that it may be passed and submitted to the voters in November. This followed the defeat of a 53-cent rate ordinance at the polls on August 13th.

The gas companies, it is stated, are holding out for a 55-60-65-cent rate schedule, which the council once accepted in recent months and then repealed in favor of the 53-cent proposal which was voted on in the referendum. The present 40-cent franchise ordinance expired on September 12th of this year.

Hearings were begun in Federal court on September 9th in a suit by the utilities to enforce the 55-60-65-cent rates. They contended that the first ordinance when accepted by the companies constituted a contract notwithstanding a later repeal and the referendum.

Commission to Review Gas Rate Ordinance

THE United Fuel Gas Company has appealed to the Ohio Commission for authority to charge a higher rate than that fixed in an ordinance recently adopted by the city of Ironton. The company contends that it cannot produce gas at the rate specified in the ordinance, which is 33 cents with a discount of 3 cents for prompt payment of bills.

Heretofore the company has charged 45 cents with a 5-cent discount. The franchise of the utility expired about four years ago and no adjustment of the rate schedules has been made since that time.

Oregon

Stand-by Charge for Water Service Protested

THE Portland Association of Building Owners and Managers, on August 30th, filed written protest against a proposed ordinance readjusting local water rates which was before the Portland city council. The main objection was to the so-called stand-by service charge for protection from fire.

The statement alleged that there were 449 such services installed in office buildings, hotels, and the larger apartment houses, and all industries and properties which find it necessary to install sprinkler service, inside standpipes, pressure tanks, and booster pumps for the better protection of their properties and in accordance with fire department regulations.

The protest is based upon the ground that these properties are among the best customers of the water bureau, and that property owners should be encouraged and not penalized when they invest their capital in sprinkler systems for protection against fire damage. It is also pointed out that quite a number of cities of the United States do not impose a charge upon water users for property improved in this manner.

Pennsylvania

Dedication of the New Offices of the Commission

THAT Pennsylvania thinks well of its Public Service Commission and appreciates the importance and magnitude of its work is evidenced by the fine home it has furnished the Commission in the new North Office Building in Capitol Park, Harrisburg, which was dedicated on September 5.

The Commission occupies three floors of

the new structure, the remaining space being assigned to the state highway department. This is an excellent arrangement as the two departments are closely associated in much of their work. The new building, which is the third of a group of five, has just been completed. Secretary of Highways James Lyall Stewart and his chief engineer Samuel Eckels made the layout of offices for their department. Chairman William D. B. Ainey and chief engineer F. Herbert Snow and a committee arranged the offices for the Public Service Commission. These offices are probably the finest and most convenient in the country.

It is something of a job to provide an adequate filing system for a Commission as large and active as that of Pennsylvania, but Mr. Snow with a long experience behind him has not only planned a system which is not only ample for present needs but which, it is thought, will take care of future requirements.

The opening exercises were attended by many public officials, distinguished lawyers, business men, and railroad and public utilities executives.

Governor Fisher, who had been called to Washington, was represented by Robert L. Lewis, secretary of the commonwealth, who read a letter from the Governor commending the work of the Commission in the highest terms. Among others who spoke were B. E. Taylor, secretary of property, Commissioner Clyde B. Aitchison of the Interstate Commerce Commission, and Commissioner Emerson Collins of the Pennsylvania Commission.

Tennessee

City's Insistence on Tax Bars Lower Gas Rate

If Nashville wants cheaper gas rates it will have to fight for them. With this introduction the Nashville *Tennessean* tells us that the Nashville Gas & Heating Company on August 27th withdrew its offer of a new schedule of gas rates for Nashville and the vicinity.

The offer was based on the city's willingness to drop its legal action to recover $140,000 in taxes which it claims are due from the utility company over a period of three years. Instead of compromising on this claim, the city officials have expressed their determination to carry the fight to the state supreme court.

An ordinance provision that 5 per cent of the gross revenue of the gas company should be paid to the city was held void and unenforceable in chancery court, in an injunction suit brought by seven citizens and gas users against the city of Nashville and the Commission. Mayor Howse has announced that the city will carry the appeal from the decision of the chancellor to the highest court. If upheld, the mayor states, he will proceed to collect "what the gas company owes the city." It may take three years to get a final verdict, attorneys declare.

Wisconsin

Unequal Gas Rates in Annexed Territory

During the early part of September there was agitation for the commencement of an action before the Railroad Commission to equalize the gas rates in the city of Milwaukee, by relocating the boundary line dividing the section served by the Milwaukee Gas Light Company and that served by the Wisconsin Gas & Electric Company of Racine, both of which companies are established in that part of the state.

The annexation of certain territory to the south of Milwaukee resulted in residents of the city living north of Howard avenue, the dividing line, paying less than customers south of that street. The Milwaukee Gas Light Company, operating north of Howard avenue, was charging much lower rates than the Wisconsin Gas & Electric Company, which operated to the south. It is contended that all citizens should enjoy the same rates.

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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11. Public car and taxicab operators were required to furnish liability insurance in the amount of $1,000 for any one accident involving damage to property, including baggage, p. 570.

[July 9, 1929.]

ACTION by the Commission in the matter of prescribing conditions, rules and regulations relative to the furnishing of liability insurance, surety bonds, or securities by taxicabs and public cars.

Appearances: E. P. Ryan, for Grand Island Chamber of Commerce, Grand Island; Lloyd Jensen, Yellow Cab Company, and George Cowton, insurance, Grand Island; E. R. Heflin, for Martin Brothers & Company, insurance, Omaha; F. E. Crowley, Resident Manager, National Bureau of Casualty & Surety Underwriters, Omaha; Fred Grothe, Insurance, Lincoln; Lyle Yeoman, Norfolk Yellow Cab Company, Norfolk; Richard L. Stout, Lincoln, representing C. L. Cline and J. E. Dudley; R. E. Havens, for Havens Drive-it-Yourself Company, Grand Island; Verne Hainline, Grand Island; H. H. Graham, Kearney, representing Yellow Cab Company; also William Sentera, Art Nevill, Don Sotoses, and Frank Simpson; J. R. Wessele, Insurance, York; Fred Liles, National Surety Company, Omaha; J. E. Dudley, Lincoln, private operator; S. H. McCormick,

Shamrock Taxi Company, York; Homer Stuart, Insurance, Omaha; R. E. Munson, Lincoln, Drive-it-Yourself Company and Taxi Company; Harry Koch, Insurance, Omaha; S. A. Rouser, Yellow Cab Company, Omaha; Charles McLaughlin, Attorney, Omaha, representing Yellow Cab and Baggage Company, Omaha; Melvin Bekins, Bekins Van & Storage Company, Omaha; Everett C. Wilson, Kansas City, Missouri, representing the Saunders System; Bert A. Anderson, Capital Auto Livery Company, Lincoln; Comstock & Son, Nebraska City; Grant Street Taxi Company, Omaha; H. Carpenter, for DeLuxe Cab Company, Omaha; S. N. Collins, Palace Auto Livery Company, Omaha; R. D. S. Bennett, Yellow Cab Company, Lincoln; A. T. Mapes, Attorney, Norfolk, representing the jitney men of Norfolk; C. F. Barr, Seward, representing the jitney boys of Seward; Tom Williams, Hastings Yellow Cab Company, Hastings; Roy Tibbetts, Attorney, Hastings, representing Yellow Cab Company, Hastings; David A. Fitch, Omaha, representing Blue Cab, 5 & 10-cent Cab Company, Omaha; Joe Gleason, Yellow Cab Company, Lincoln; L. W. Burke, Lincoln; Henry Bush, U. S. Fidelity & Guaranty Company, Omaha; E. P. Minnick, with C. W. Palm Insurance Agency, Lincoln; W. G. Richter, Checker Cab Company, Lincoln; W. J. Seidell, Checker Cab Company, Lincoln; C. E. Darr, Darr Rent-a-Car Taxi & Transfer Company, Fairbury; Hugh LaMaster, Assistant Attorney General, for the Commission.

Curtiss, Chairman: Acting in conformity with the provisions of House Roll No. 306, an Act of the 45th Session of the Nebraska Legislature, 1929 (Session Laws of Nebraska, 1929, Chapter 147, page 510), which law becomes effective July 25, 1929, the Nebraska State Railway Commission, hereinafter referred to as the Commission, has adopted this resolution relative to the subject matter of such Act.

The bill is entitled "An Act relating to taxicabs and public cars and providing for the filing of insurance policies, surety bonds or securities with the State Railway Commission for the protection of the public; and to provide penalties for the violation thereof," and defines a "taxicab" to mean "A motor vehicle,

fitted with a taximeter which indicates the fare for the distance covered, used within or without the corporate limits of any city or village as a common carrier for the transportation of passengers for hire, not including interurban motor busses and motor coaches or busses conducted as a part of any street railway system or service, or urban busses equipped to carry more than seven passengers or other carrier under the general control of the Nebraska State Railway Commission pursuant to Chapter 150 of the Laws of Nebraska for 1927," and a "public car" to be "a motor vehicle available for hire by the public with or without a chauffeur, not equipped with a taximeter, nor operating over a fixed route, nor upon a fixed schedule but engaged only upon call or by arrangement or agreement including rented or leased vehicles to be driven by the lessee or bailee and livery vehicles."

Sections 2 and 3 of the Act read as follows:

"Section 2. Insurance or Surety Bond Required.—No person, firm, association, or corporation shall operate or use any taxicab in any manner as above defined in the state of Nebraska until there has been filed or deposited with the Nebraska State Railway Commission either a liability insurance policy or a surety bond with an approved surety company as surety or negotiable and salable securities at the option of such person, firm, association, or corporation but which shall be approved by the Commission, in such sum and with such other terms and provisions and on such conditions as the Commission may deem necessary adequately to protect the interest of the public having due regard for the number of persons and amount of property affected."

"Section 3. Letting, Renting, or Leasing of Public Cars.—Any person, firm, association, or corporation engaged in the business of letting, renting, or leasing public cars in any manner as above defined to be operated upon the public highway shall be subject to the provisions of the preceding section in the same manner and to the same extent as if such person, firm, association, or corporation were actually engaged in the business of carrying or transporting passengers for hire."

Section 4 is the penalty clause and provides that those who violate such Commission order as shall be entered in the matter

"shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be fined in any sum not exceeding $500, or shall be imprisoned for a period not exceeding three months in the county jail of the county where the individual or corporation violating the same shall reside, or has its principal place of business, or both."

[1] It will be noted that under the law, all operators of "taxicabs" or "public cars" are required to file with the Commission either liability insurance policy or surety bond or negotiable and salable securities. It becomes the Commission's obligation to prescribe the amount of liability insurance or surety bond or negotiable securities necessary and the terms and provisions and conditions surrounding the furnishing of same, that "the interest of the public, having due regard for the number of persons and amount of property affected" shall be adequately protected.

General notice of same having been given, conference with operators of "taxicabs" and "public cars" respecting the subject matter was held in the House Chamber in the Capitol Building, Lincoln, on May 24th, at which time parties and companies above listed in appearances, were represented. Those entering appearances represented most of the larger operators of both taxicabs and public cars in most of the larger cities and towns in the state.

The principal questions discussed had to do with the amount of liability insurance or surety bond, or negotiable and salable securities necessary to adequately protect the interest of the public, and the relationship which should properly exist between liability insurance and surety bonds, and negotiable securities.

The discussion developed the fact that many insurance companies, doing business in Nebraska, would not write this class of business; also, that by those companies handling this class of business, Nebraska was divided into three rate groups, namely, Omaha, the highest rated district; Lincoln, the next highest rated district; and all other cities and towns in Nebraska, the lowest rated district.

[2, 3] Several proposals were made by those present respecting the possible attitude the Commission should take in the administration of the Act. It was proposed by some that the cost

of providing any insurance might be so burdensome as to put certain operators out of business; that accordingly, the law resulted in confiscation of property and should not be enforced by the Commission under these circumstances, because of being unconstitutional. The Commission finds itself unable to agree with this reasoning. It is not the province of the Commission to declare laws unconstitutional, although the Commission shall keep in mind the cost of protection, in so far as this is possible, in fixing the amount of insurance necessary. Certainly it is not the desire of the Commission to arbitrarily put an operator out of business as a result of its order herein.

[4] It was also argued that the amount of insurance or other protection required should be graded on a basis of the size of the city, the operators in the larger cities being required to provide greater protection than those in smaller cities. Again, the Commission cannot agree with this logic. A person injured in a smaller town or city, is entitled to the same quantum of protection as a person injured in a larger city. Undoubtedly, the likelihood of accident is greater, the larger the city, but this factor is one which should be given consideration in the amount of premium paid—a matter over which the Commission has no control. However, as noted above, the premium on liability insurance is much higher in Omaha and Lincoln than other cities and towns in the state.

[5] Again, it was proposed that the amount of protection required should give consideration to the operator's past accident record, his financial responsibility, and his willingness and ability to meet any and all claims which might arise as the result of accident, this to be determined upon the basis of past experience, and history. It does not seem possible or practical to make any such refinement. Financial responsibility and ability to constantly meet all claims for damage out of the company's treasury, are matters extremely difficult to determine in the first instance, and perhaps more difficult to be constantly informed about, after having once been determined. While a favorable accident record is significant, yet it is an unstable factor upon which to base protective requirements, since accidents are not entirely avoidable and ofttimes come in rapid succession over a

brief period of time after a previous long period of favorable experience. However, high type operation with few accidents and minor claims should indeed be reflected to the advantage of the operator, in the premium paid.

Generally speaking, the accident experience of the operators present, both taxicab and public car, was highly favorable. Many operators of both "taxicabs" and "public cars" had, over a period of years, experienced no accidents worthy of mention. The highest claim paid for injury resulting from any one accident, where one or more than one were injured or killed, totaled $6,500; the next highest $3,500. Other than these two claims, no operators reported claims paid in excess of a few hundred dollars. Several operators, on their own motion, carry liability insurance in amounts $10,000 to $20,000, and others in amount $5,000 to $10,000. They were emphatic in their statement that they would not hazard their personal estate by operating without this protection. Some of them were located in smaller cities, and each advised their business was conducted with a profit to themselves. Others insisted that their volume of business would not permit of carrying insurance.

[6, 7] It is difficult to say with exactness just what amounts of liability insurance, surety bond, or negotiable and salable securities will adequately protect the public interest. If the Commission were to conclude that adequate protection to the public means the providing of financial security against the most disastrous accident that might be imagined, it would undoubtedly put most "taxicab" and "public car" operators in the state out of business, and require those, who might survive, to increase their rates. It is not thought that this was the intent of the legislature. The Commission feels that the favorable accident record of these operators in Nebraska should properly be considered in reaching conclusions. No single accident was experienced, in which one or more than one was injured, that involved the payment of claims in excess of $6,500. The overwhelming majority of claims involved only small amounts. This experience covers operation of hundreds of cars in most of the larger cities and many of the smaller cities of Nebraska over a period of many years. Since the experience of both taxicab

and public car operators respecting accidents was quite alike, the Commission will require protection from each in similar amount, at least until such time as its observation from administration of the law leads it to conclude that requirements should be different. It was the consensus of opinion of those present that liability insurance providing protection in amount $5,000 where only one individual was injured or killed, and $10,000 where more than one individual was injured or killed, should be the maximum requirement. The Commission concludes that liability insurance in this amount will satisfy the requirements of the law. Testimony of insurance men was to the effect that if the amount were to be made less than this, the advantage in reduced premium would be very insignificant. This, it was explained, was due to the fact that the insurance company furnishes legal counsel in litigated cases, and oftentimes, where judgments returned involve the actual payment of no monetary claim or claims of small amount, the actual expense of litigation borne by the insurer is great. Furthermore, the Commission does not believe that the mandate of the legislature would be complied with if protection in less amount than this were permitted. It does not believe that the providing of liability insurance in this amount will actually put any operators out of business, although in instances it may necessitate slightly increased charges which the traveling public should willingly pay for the added protection.

[8] Since the law also permits the furnishing of "surety bond" or "negotiable and salable securities" and since there may be some operators who desire to avail themselves of one of these options, the Commission must also prescribe the amounts necessary if either be furnished. Surety bonds could, no doubt, be secured at much less expense to the operator than liability insurance. However, the operator purchases no actual protection to his personal estate in providing surety bond, since the bonding company is only called upon to satisfy judgment arising from accident, after any collateral which may have been required and the personal estate of the insured, subject to levy and execution, have been exhausted. The Commission concludes that in no event should the bond or negotiable security be less than the maximum insurance of $10,000 required for one accident, where

more than one person is injured or killed. To multiply this maximum amount of $10,000, where more than one car is operated, by the number of cars operated, to determine the amount of bond or negotiable securities, does not seem necessary to adequately protect the public. It is entirely unreasonable to expect that each and every car owned and operated by any one individual, company, or corporation will, within so brief a period of time as to make impossible the filing of additional bond or negotiable security, have major accidents, each of which involves the maximum obligation of $10,000. Nothing in the past experience of these operators in Nebraska would justify even one with the wildest of imagination reaching such a conclusion. The very fact that the legislature provided these further options, leads the Commission to conclude that it was presumed such regulations, as it might prescribe concerning them, would be practical and sane and based upon such actual experience of the operators as the Commission could secure, rather than upon imaginary and fanciful possibilities. The Commission, in its order, will prescribe a gradation, which, based upon such facts and data as it now has at hand, will be entirely sufficient to adequately protect the public. The order will require that the surety bond or securities be filed with the Commission and that they shall be constantly maintained in the amount set forth. Such surety bond or negotiable securities shall not be liable for the satisfaction of a judgment, as the result of any one accident in excess of $5,000 where only one person is injured or killed, and $10,000 where more than one person is injured or killed. The Commission will require immediate report to be made to it of all accidents and of all actions instituted in court covering claims for damage arising from accident.

[9] If negotiable securities are furnished, the Commission will require that they shall be of the same nature as those accepted by the state treasurer in the securing of state funds, that is, Federal, state, municipal, county, or school district bonds.

[10] Objection was filed by certain operators of "public cars" more commonly known as "rent-a-car" or "drive-it-yourself," to the Commission order requiring protection to the driver of such cars or the passengers, other than the driver, where the driver

is not an employee of the company. It was stated that experience had shown such protection lends itself to violent abuse through the medium of fraudulent claims which were difficult to meet, in that the company could not have a representative present at the time of the alleged accident, the driver being other than an employee of the company; that as a result, where insurance carried this additional protection, the premium was of necessity burdensomely high. Furthermore, it was contended that such persons were not within the contemplation of the legislature as "the public." The objection would, of course, not lie where the driver of a public car is an employee of the company renting the car, or respecting taxicabs, since a representative of the company is always present and false claims of injury are more easily resisted. However, it would be of equal force respecting the use of taxicabs where the driver is the person renting or using the car, no employee of the company being present. The Commission finds the objection is a valid one. There seems to be no good reason why the state should compel protection for the driver of a public car or taxicab, who controls absolutely the movement of the car, or protection to the passenger who is in the car at the invitation of the driver. The company renting the car is, of course, responsible for accidents resulting to the driver or the passengers from the use of cars not properly equipped with brakes, lights, or other recognized facilities for handling and controlling the car. It is not thought that the driver of such a car, or the passengers, are such part of "the public" for the purposes of this legislation, as to require protection contemplated in the Act.

[11] The law seems to contemplate protection, not only to persons, but also to property. Based upon such information as the Commission has, the conclusion is reached that protection in amount of $1,000 covering possible damage to property, including baggage of the passenger, resulting from one accident, is adequate.

The Commission is also providing in its order certain endorsement which it will require shall be attached to each liability insurance policy. The endorsement is, in substance, the endorsement which is required on liability insurance policies covering

the operation of common carrier motor busses. Insurance companies have acquiesced in the furnishing of such endorsement. It is thought that the supplying of same will more adequately protect the public and will not be burdensome to the operator purchasing the insurance.

It should be understood that the Commission, in dealing with such subject matter, is confronted with problems previously foreign to its work. Under the administration of the law, additional information will be gained, and it may be that as these facts and data accumulate, substantial revision of the order herein will be found necessary that the mandate of the legislature may be carried out, i. e., adequately to protect the interest of the public, having due regard for the number of persons and amount of property affected.

ORDER.

It is therefore *ordered* by the Nebraska State Railway Commission that not later than Thursday, July 25, 1929, each and every operator of a "taxicab" or "public car" as defined in Chapter 147, § 1, Session Laws of Nebraska, 1929, pages 510, 511, shall file or deposit with the Nebraska State Railway Commission at its offices, Lincoln, Nebraska, and have approved by it, either

A liability insurance policy, providing liability insurance to the general public, including passengers in taxicabs other than employees, and passengers in public cars, other than employees, where in either instance the driver of such taxicab or public car is in the employ of the company renting the car, and excluding the driver of, or passengers in, public cars and taxicabs, where the driver is other than an employee of the company renting the car, in amount of $5,000 covering injury to, or death of one person, and $10,000 covering injury to, or death of more than one person, resulting from any single accident, such liability insurance to also include damage to property, including baggage or other property of passengers, in amount not to exceed $1,000, resulting from any single accident, and such liability insurance to be provided for each and every car used in "taxicab" or "public car" service;

Or surety bond, or negotiable and salable securities in following amounts:

If only one car be operated	$10,000
Two to five cars, inclusive	15,000
Six to ten cars, inclusive	20,000
Eleven to twenty cars, inclusive	25,000
Twenty-one to forty cars, inclusive	35,000
Forty-one to eighty cars, inclusive	45,000
More than eighty cars	60,000

such surety bond or negotiable and salable securities to be not subject to execution of judgment as a result of injury or death resulting from any one accident in excess of $5,000 where only one person is injured or killed, and $10,000 where more than one person is injured or killed, or in excess of $1,000 damage to property, including property of passengers, resulting from any single accident, the amounts of such surety bond or negotiable and salable securities filed with the Commission to be never less than the amounts above specified.

It is *further ordered* that the following endorsement shall be attached to and become a part of each and every liability insurance policy filed with the Commission as a result of this order:

1. In consideration of the premium stated in the policy and determined in accordance with the provisions of the policy and/or endorsements attached thereto, the company hereby waives a description of the automobiles to be insured thereunder, and agrees to pay, subject to the limits of liability set forth in the policy, any final judgment for personal injury including death resulting therefrom, sustained by any person other than an employee of the assured (while engaged in the maintenance or operation of the assured's automobiles) caused by any and all passenger carrying automobiles operated by the assured. The named assured states by acceptance of this endorsement that the list of passenger carrying vehicles contained in said policy is a complete list of all passenger carrying vehicles owned by him at the inception of said policy, and the assured agrees to immediately notify the company and the Nebraska State Railway Commission, of any additional passenger carrying vehicles placed in service.

2. It is further agreed by and between the parties hereto that

the obligations and promises of this policy with regard to motor vehicles covered thereby shall not be affected by any act or omission of the assured, or of any employee of the assured, with respect to any condition or requirement of said policy, nor by any default of the assured in the payment of premiums, or in the giving of any notice required by said policy or otherwise, nor in the death, insolvency, bankruptcy, legal incapacity, or inability of the assured; nor by the violation of any statute or rule or order of the Nebraska State Railway Commission, but the violation of this provision shall not affect the right of recovery of any person other than the named assured.

3. The conditions, limitations, and provisions in the policy are, however, to remain in full force and effect as binding between the assured and the company, and the assured hereby agrees to hold the company harmless against, and/or reimburse the company for, any and all sums of money, including loss, costs, expenses, and disbursements of every kind which it may be obliged to pay as a result, direct or indirect, of the violation or breach of any of the conditions, provisions, or limitations of the policy.

4. In consideration of the rate of premium provided for in the policy to which this endorsement is attached, the said policy is hereby extended to cover while any passenger carrying vehicle insured under said policy is being used to carry passengers for a monetary consideration, any provision in the said policy to the contrary notwithstanding.

5. No assignment of interest under this policy shall be valid unless approved by the Nebraska State Railway Commission.

6. This policy shall remain on file in the office of the Nebraska State Railway Commission at Lincoln, Nebraska.

7. Any requirement contained in the policy to which this endorsement is attached, making provision for less than ten days notice as to effective date of cancellation, is hereby amended to read that any such notice shall be given by either party to the other and to the Nebraska State Railway Commission not less than ten days prior to the effective date of cancellation; said ten days' notice to commence to run from the date notice is actually received at the office of the Commission.

8. It is understood and agreed that this policy is accepted and approved by the Nebraska State Railway Commission under the express promise and condition on the part of the company, that nothing in the policy to which this endorsement is attached or in any endorsement already attached or which may hereafter be attached, which is inconsistent with the terms of this endorsement, shall in any manner affect the validity of this endorsement.

9. In consideration of the premium stipulated in the policy to which this endorsement is attached, it is understood and agreed that this policy shall be a continuing indemnity. The indemnity thereof shall not be reduced as to any succeeding accident by any payment of any claim or by any payment on any previous accident.

10. Nothing herein contained shall be held to vary, alter, waive, or extend any of the terms and conditions of said policy other than as above stated.

This endorsement is hereby made a part of Policy No. —— issued by the ———— of ———— to ———— but shall not take effect unless countersigned by a duly authorized representative of the company.

Countersigned at ————
This ——— day of ————, 192—

————————————
Authorized Representative.

The above Endorsement is accepted by the
Assured, as witness his signature:

————————————
Signature of assured.

It is *further ordered* that if liability insurance or surety bond be furnished, the same shall be accepted only when issued by insurance companies or licensed bonding companies authorized by the Bureau of Insurance of the Department of Trade and Commerce of the state of Nebraska, to do business in the state of Nebraska.

It is *further ordered* that "negotiable and salable securities" shall be taken to mean only governmental bonds, that is, *federal,* state, municipal, county, or school district bonds.

It is *further ordered* that accidents arising from or in con-

nection with the operation of taxicabs or public cars, resulting in death or injury to one or more persons, or in damage to any property exceeding the sum of $100 shall be reported forthwith to the Nebraska State Railway Commission at Lincoln, Nebraska. The report, which shall be typewritten, shall contain the following facts:

1. The time and place of accident.

2. The names and addresses of the owners of all vehicles involved.

3. The names and addresses of the drivers or operators of all vehicles involved.

4. The state license number, make, and type of all vehicles involved.

5. The number of passengers, if any, in each of the vehicles involved.

6. The names and addresses of persons injured or killed.

7. Names and addresses of witnesses, if any.

8. A full and complete report of the accident; cause, party, or parties responsible, if any; condition of roads, weather conditions; speed of vehicles involved, etc.—(Blanks for this purpose will be supplied by the Commission.)

It is *further ordered* that in each and every "taxicab" and "public car" operated in this state, there shall be prominently displayed in the car a card carrying the following notation:

No. ———— Date. ————

Passengers riding in this car, except where the driver is other than an employee of the company, are protected in accordance with rules and regulations prescribed by the Nebraska State Railway Commission

Resolution No. 110

John E. Curtiss, Chairman.
C. A. Randall, Vice-Chairman.
John H. Miller, Commissioner.

Attest:

Hugh Drake, Secretary.

It is *further ordered* that the above conditions, rules, and regulations constitute and are the order of the Nebraska State Railway Commission, required by the provisions of Chapter

147, Session Laws of Nebraska, 1929, page 510, and the penalties for the violation of any of the same shall be those set forth in section 4 thereof, above quoted.

It is *further ordered* that such conditions, rules, and regulations shall be of full force and effective as of 12:01 A. M., Thursday, July 25, 1929.

Made and entered at Lincoln, Nebraska, this 9th day of July, 1929.

NEW YORK DEPARTMENT OF PUBLIC SERVICE.
METROPOLITAN DIVISION (TRANSIT COMMISSION).

RE SLAUGHTER W. HUFF et al. Receivers of New York & Queens County Railway Company.

[Case No. 2927.]

Rates — Contracts — Filing of tariff by utility.

*1. The rates which a carrier is expected to put in its tariff schedule, under a section of the law permitting a carrier to file changed tariffs effective within thirty days unless acted on by the Commission, are only those which have not been fixed by contract or otherwise fixed by law, p. 588.

Rates — Rates fixed in franchise.

*2. Rates allowed by law are not confined to those fixed in a statute but include also rates lawfully imposed by local authorities in consenting to a franchise and may be contractual or in some cases regulatory in character and may be accomplished by acts other than of the Public Service Commission Law, p. 588.

Rates — Rates fixed by law — Modification.

*3. Where rates have already been fixed by statute, franchise, or order, the carrier must secure a modification of such rates by statutory law or by order of the Commission before it can lawfully or effectively insert any change in the tariff, p. 588.

Rates — Franchise contracts — Filing of schedule.

4. Tariffs filed by a surface street railway company purporting to increase a 5-cent rate fixed by franchise were rejected as illegal, p. 588.

[July 1, 1929.]

INVESTIGATION of increased fare schedules filed by a street railway company; schedules rejected.

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* These holdings were formally made by the Commission in Re Dry Dock, R. B. & B. R. Co. P.U.R.1929C, 305, but are indicated in Chairman Fullen's opinion in the instant proceedings as proper holdings for this case also. P.U.R.1929D.

Fullen, Chairman: Pursuant to an order made on April 27, 1922, by the supreme court, Queens county, in a trustee's action to foreclose a mortgage dated April 1, 1892, given by the Steinway Railway Company of Long Island City (which was merged into the New York & Queens County Railway Company on September 16, 1896), Slaughter Huff and Robert C. Lee were appointed Receivers of the property of the New York Queens County Railway Company, which is subject to the lien of the said Steinway mortgage.

The Receivers began the operation of the street surface railways, for the so-called Steinway Lines, on May 10, 1922, and charged and still charge a fare of 5 cents in accordance with the tariff schedule filed by them with the Commission and which became effective on May 10, 1922.

On August 7, 1928, the Receivers filed certain tariff sheets providing a fare of 7 cents on the Steinway Lines and served notice upon the Commission that the proposed new rate would become effective on September 10, 1928.

On August 29, 1928, the Commission directed a hearing concerning the propriety of the proposed rate and suspended its operation until January 7, 1929, but expressly reserved until after the hearing a determination of the questions as to (1) whether the Receivers were properly proceeding under § 29 or whether they should proceed under § 49 of the Public Service Commission Law, and (2) whether the Commission has power to change the existing rate.

Such reservations seemed necessary in view of the preliminary injunction granted on May 10, 1928, by the United States District Court, Southern District of New York, in Interborough Rapid Transit Co. v. Gilchrist, 26 F. (2d) 912, P.U.R.1928D, 92, preventing the prosecution of suits brought by this Commission in the state court wherein a determination could be had as to the right of a carrier to increase a fixed rate by filing schedules under § 29 before obtaining a modification of such a rate. That injunction has recently been vacated as the result of the decision of the United States Supreme Court on April 8, 1929, P.U.R.1929B, 434, reversing the lower court. But when the Receivers, purporting to act under § 29, filed the tariff sheets

showing the proposed increase in fare, it seemed useless to institute a proceeding in the state court to question the Receivers' right to proceed under that section in view of the injunction previously granted by the Federal District Court in the Interborough Case, *supra*.

On December 19, 1928, the Commission further suspended until July 7, 1929, the operation of the schedules, filed by the Receivers of the Steinway Lines, showing a 7-cent fare.

The minutes of the hearings, which were begun on September 14, 1928, and closed on June 20, 1929, contain over 1,100 pages and the exhibits received or marked for identification number 76.

Lines Operated by Receivers.

The Receivers operate six lines in that part of the borough of Queens which was Long Island City prior to January 1, 1898. Four of the lines are operated exclusively within that territory. Two of them also cross the Queensboro Bridge to its westerly end in the borough of Manhattan. The six lines are as follows:

1. Jackson avenue line—from the foot of Borden avenue and mostly along Borden avenue and Jackson avenue to the Woodside car barn, a distance of approximately 2.80 miles.

2. Steinway line—from the Manhattan end of the Queensboro Bridge over said bridge to Jackson avenue, to Steinway avenue, to Riker avenue, a distance of 4.51 miles.

3. Dutch Kills (Astoria line)—from the Manhattan end of the Queensboro Bridge over said bridge to Jackson avenue, to Second avenue, to Grand avenue, to Crescent street, to Newtown avenue, to Flushing avenue, to Main street, to Fulton avenue, to 92nd street ferry, a distance of 4.23 miles.

4. Ravenswood line—from Borden avenue and Front street, along Borden avenue to Vernon avenue, to Boulevard, to Fulton avenue, to 92nd street ferry, a distance of 2.94 miles.

5. Flushing avenue line—from 92nd street ferry along Fulton avenue to Main street, to Flushing avenue, to former city line of Long Island City, a distance of 1.87 miles.

6. Broadway line from Jackson avenue and Newtown road, Woodside, on Newtown road to Broadway, to Boulevard, to Fulton avenue, to 92nd street ferry, a distance of 2.26 miles.

Franchises of Predecessor Companies.

In support of their claim that they have succeeded to the properties, rights and franchises of the Steinway Railway Company of Long Island City and its predecessor companies, the Receivers introduced considerable documentary evidence which include franchises granted by the legislature and those granted by local authorities. They have indicated on a map (Exhibit No. 41) the various routes described in such franchises, but they have not shown under what franchises the tracks upon different streets on which the Steinway Lines are operated were actually constructed. In instances it appears that as many as three franchises were granted at different times for construction and operation upon the same or a part of the same street. The city of New York has offered evidence (Exhibit No. 75) indicating by whom, under what grants and when tracks were constructed upon the various streets. The correctness of that evidence was not questioned by the Receivers.

It has seemed advisable to set forth the following resume of the history of the Steinway Railway Company and its predecessors, with particular reference to franchise grants and any fare provisions contained in them:

Name of Company.	Date of Incorporation.
1. The Astoria and Hunters Point Railroad Company,	April 23, 1867.
2. The Astoria and Hunters Point Railroad Company,	January 31, 1877.
3. The Long Island City Share Railroad Company,	June 1, 1874.
4. Jackson and Steinway Avenues Railroad Company of Long Island City,	July 23, 1879.
5. The Broadway and Bowery Bay Railroad Company,	June 19, 1883.
6. Steinway Avenue and Bowery Bay Railroad Company,	June 20, 1883.
7. Steinway and Hunters Point Railroad Company,	April 28, 1883.
8. Steinway Railway Company of Long Island City,	March 23, 1892.

1. *The Astoria and Hunters Point Railroad Company* was incorporated April 23, 1867, by Chapter 662, Laws of 1867, which authorized the company to construct and operate a double track railroad, to be operated by horse power, along the route in the village of Astoria and in Long Island City, substantially as follows:

From Astoria ferry through Fulton street, Main street, Newtown avenue, Crescent street, Grand street, Second avenue, Pierce avenue, First avenue, Ridge road, Academy street, Payn-

tar, Harris and East avenues, East Sixth street, West Sixth street, West avenue, West Third street, Front street to West second street (now Borden avenue).

Some of the provisions in that Act were: "and the rate of fare shall not exceed 10 cents for the whole distance. . . .

"The said company shall not be authorized and empowered to lay their railroad above described through and along any of the streets or avenues above described until they have obtained the consent of the trustees of the said village of Astoria or the consent of the *proper* authorities in the said Long Island City, respectively, for that purpose; and said road shall be commenced within one year and completed within two years."

On June 28, 1867, the village of Astoria appears to have given its consent for that part of the road above described lying within that village. That consent obtained no fare provision.

By an agreement dated March 10, 1868, the company acquired from the Hunters Point, Newtown and Flushing Turnpike Company: "the right to lay a double track iron railway for the use of cars drawn by horses or mules as hereinafter provided upon the bed of the Turnpike road of the party of the first part, known as 'Jackson avenue,' from the westerly terminus of said Turnpike road to a point in the vicinity of the intersection of the old Dutch Kills Road therewith."

That agreement provided:

"No greater fare than 5 cents for each passenger shall ever be charged by either party upon the railroad herein provided to be constructed but any lower fare may be agreed upon at any time by the parties hereto."

By Chapter 411, Laws of 1868, the company was authorized to change the route of its road: "by running the same from Wilbur avenue along Academy and Jane streets, or the old Astoria road and Jackson avenue, to the ferry at Hunters Point, after obtaining permission from the Hunters Point, Newtown and Flushing turnpike road company therefor," and was required to commence the said road within one year and complete same within two years after April 27, 1868.

The city's evidence (Exhibit No. 75) indicates that tracks were constructed under the two legislative grants, mentioned

above, prior to September 1, 1871, and double tracks completed by 1877.

By Chapter 789, Laws of 1872, the company was authorized to extend its road along Thomson avenue from Jackson avenue to the easterly line of Long Island City but there is nothing to indicate that the company acted thereunder.

The property and franchises of the Astoria and Hunters Point Railroad Company were sold under foreclosure and transferred, by deed dated October 19, 1876, to two trustees, the survivor of whom transferred same by deed dated January 28, 1880, to a company, formed on a reorganization, and called the Astoria and Hunters Point Railroad Company.

2. *Astoria and Hunters Point Railroad Company* (2nd) was incorporated on January 4, 1877, under the General Railroad Law of 1850. This company seems to have obtained the consent of Long Island City on March 6, 1877, to construct a road along Broadway from Second avenue to Steinway avenue. According to Exhibit No. 75 the track was constructed under that consent in 1878 by P. J. Gleason, as lessee of the road.

This second Astoria and Hunters Point Railroad Company appears to have leased its property and franchises on January 27, 1885, to the Steinway and Hunters Point Railroad Company and to have been merged into the latter company on November 26, 1885.

3. *The Long Island City Short Railroad Company* was incorporated June 1, 1874, under General Railroad Law of 1850 and Chapter 221 of the Laws of 1874. The latter act authorized certain named individuals to construct and operate a railroad over a route hereinafter described and required those individuals and their associates within one month after the passage of the Act (April 21, 1874): "to organize as a corporation under the general railroad act, and such corporation when so formed shall have the powers and be subject to all the provisions of said act not inconsistent herewith, except the following sections, or any amendments thereof, namely, the twenty-seventh, thirty-first, thirty-fourth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, and forty-fourth and except also as to the number of associates required by the first section of said act."

The route authorized by said Act was as follows:

From the easterly boundary of the land owned by the East River Ferry Company in Borden avenue, thence along Borden avenue, Vernon avenue, the Boulevard, Fulton avenue to the 92nd street ferry in Long Island City, and also along such other streets in the Fourth Ward of that city as the common council, with the consents of owners of two third in value of property fronting on said streets, may permit.

Said act provided that "compensation shall not exceed 6 cents for any one passenger."

The act further required such corporation to begin the construction of its road within six months after filing its articles of association and to expend thereon 10 per cent of its capital and to complete the road and put same in operation within one year from the time of filing said Articles under penalty of the cessation of its corporate existence and powers.

On April 13, 1875, the Common Council of Long Island City granted two franchises to this company for the following extensions:

(a) "From the junction of said railroad and tracks at the corner of Vernon avenue and Broadway, through Vernon avenue and Broadway, through and along said Broadway to Synder's Park between 10th and 11th avenues in the Fourth Ward of Long Island City for the accommodation of passengers going to and from said points; the same to be completed within the next ninety days."

(b) "From the corner of Sunswick Terrace and Fulton street through said Fulton street to Main street, through Main street to Flushing avenue, through Flushing avenue to Kouwenhaven street, through and along said Kouwenhaven street to Potter avenue, through said Potter avenue to Steinway avenue, and thence along said Steinway avenue to the city limits, and any other street and avenue that it may be necessary to extend said road; the same to be completed within the next ninety days."

Exhibit No. 75 shows that the company (1) completed the construction of its tracks upon the route described in Chapter 221 of the Laws of 1874 by April 1, 1875, and (2) constructed its tracks prior to June 1, 1875, upon Flushing avenue from

Main street to Steinway avenue under the consent of the common council of Long Island City. That exhibit also states that the track on Flushing avenue was reconstructed by the Steinway and Hunters Point Railroad Company in 1883.

By deed dated April 17, 1883, from James A. Covert, Referee, the property and franchises of the Long Island City Shore Railroad Company were conveyed to William Steinway who, by deed dated April 24, 1883, conveyed same to the Steinway and Hunters Point Railroad Company.

4. *Jackson and Steinway Avenue Railroad Company of Long Island City* was incorporated July 23, 1879, under the General Railroad Law of 1850 for the purpose of constructing a street railway in Long Island City over the following route:

From 34th street ferry at foot of Borden avenue to Vernon avenue, to Jackson avenue, to Steinway avenue, to some convenient point at or near Bowery Bay.

This company apparently obtained, by assignment, consents granted by the common council of Long Island City on July 26, 1876, and March 6, 1877, to James M. Freeman and his associates to lay rails and operate a railroad upon certain streets in that city, including those named above. The right to construct and operate the railroad was upon the condition "that they should run the same with care and regularity and at the lowest rate of fare." It appears from the records in the office of the clerk of Queens county in an action of the supreme court, entitled "The People of the State of New York against the Jackson and Steinway Avenue Railway Company of Long Island City," that a permanent injunction was granted on July 28, 1881, restraining this company "from operating or maintaining or in any manner retaining a railroad on Jackson avenue in Long Island City." There is nothing to show that said injunction was later vacated.

The property of the Jackson and Steinway Avenue Railroad Company appears to have been leased to the Steinway and Hunters Point Railroad Company on April 13, 1885, and to have vested in the latter on April 16, 1885.

5. *The Broadway and Bowery Bay Railroad Company* was incorporated June 19, 1883, under the General Railroad Law of

1850, to construct and operate over the following route in Long Island City:

Commencing at Broadway and Vernon avenue, thence along Broadway to Steinway avenue and thence along Steinway avenue to the northeasterly boundary line of the City at Bowery Bay.

On June 5, 1883, the common council of Long Island City granted a franchise to Henry Ziegler to construct and operate over the route above described subject to the following provision as to the fare:

"The rate of 5 cents for each passenger for any distance over said road, school children between the hours of 8:00 and 9:00 o'clock A. M. and 3:00 and 4:00 P. M. 2 cents, and members of the police force free."

On June 21, 1883, Ziegler assigned all the rights and franchise to operate the railroad under the above consent to this company.

It appears from Exhibit No. 75 that this company constructed its tracks upon Broadway and Steinway avenue under said franchise of June 5, 1883, and completed such construction on August 12, 1883.

On November 5, 1884, the common council of Long Island City consented to an extension of this company's railroad along Steinway avenue (from Broadway) to Jackson avenue, to Borden avenue, to Front street, upon condition that the provisions of Chapter 252 of the Laws of 1884 (applicable to the construction, maintenance, and operation of street surface railroads) be complied with.

It seems that the railroad of the Broadway and Bowery Bay Railroad Company was leased to the Steinway and Hunters Point Railroad Company on January 2, 1885, and to have become merged with the latter company on April 16, 1885.

6. *Steinway Avenue and Bowery Bay Railroad Company* was incorporated June 20, 1883, under the General Railroad Law of 1850 for the purpose of constructing a railroad in Long Island City over the following route:

Commencing at the foot of Borden avenue and running thence to or near to Jackson avenue and thence along and upon or near Jackson avenue to or near to Steinway avenue and thence along and upon or near to Steinway avenue, to Bowery Bay.

On January 17, 1882, the Common Council of Long Island City granted a consent to Stephen J. Simmons to construct and operate along the following route:

From Bowery Bay along Steinway avenue to Jackson avenue and along Jackson avenue to Skillman avenue, in accordance with the terms of a resolution previously adopted and Simmons' proposal whereby he agreed to carry passengers "for the sum or fare of 5 cents."

That consent was apparently assigned to one James W. Lamb, who, according to Exhibit No. 75, constructed tracks thereunder between March 23, 1882, and July 9, 1883, along Jackson avenue from Skillman avenue to Steinway avenue and along Steinway avenue to Broadway.

By deed dated July 9, 1883, Lamb and his wife conveyed all their franchise rights and railroad to the Steinway Avenue and Bowery Bay Railroad Company.

The latter apparently leased its property to the Astoria and Hunters Point Railroad Company on July 25, 1883, and was merged in that company on April 16, 1885.

7. *Steinway and Hunters Point Railroad Company* was incorporated April 28, 1883, under the General Railroad Law of 1850 as a reorganization of the Long Island City Shore Railroad Company. By deed dated April 17, 1883, from James W. Covert, referee, the property and franchises of the Long Island City Shore Railroad Company were conveyed to William Steinway who, by deed dated April 24, 1883, conveyed the same to the Steinway and Hunters Point Railroad Company.

By resolution of the common council of Long Island City, adopted November 10, 1885, and approved by the mayor on November 16, 1885, this company was granted a consent to extend its existing road as follows:

From its present tracks in Jackson avenue at Steinway avenue, thence along Jackson avenue in a southeasterly direction to the city line and thence southerly along the old Bowery Bay road 800 feet; also to extend its tracks on Flushing avenue so that they shall constitute a continuous double track from Main street to the southeasterly boundary of the city.

On November 28, 1885, the common council adopted a resolu-

tion stating that the consent granted on November 10, 1885, and approved by the mayor on November 16, 1885: "was and is given upon the express condition that the provisions of Chapter 252 of the Laws of 1884 entitled 'An Act to provide for the construction, extension, maintenance, and operation of street surface railroads and branches thereof in cities, towns, and villages' passed May 6, 1884, pertinent thereto shall be complied with."

The city's exhibit (No. 75) shows that the company, in 1886, constructed a single track upon Jackson avenue from Steinway avenue to Woodside avenue and, in 1889, a track on Flushing avenue from Steinway avenue to the Bowery Bay road under said franchise of November 10, 1885, and that the Steinway Railway Company constructed, in 1892, a second track upon the aforesaid portion of Jackson avenue.

By deed dated March 5, 1892, the franchises and property of this company were conveyed after a foreclosure sale to William Steinway, who, on March 30, 1892, in turn conveyed same to the Steinway Railway Company of Long Island City.

8. *Steinway Railway Company of Long Island City* was incorporated on March 23, 1892 for the purpose of building and operating or of maintaining and operating a railroad already built, not owned by a railroad corporation, or for both purposes, in Long Island City and in the towns of Newtown and Flushing.

By the deed, dated March 30, 1892, from William Steinway, it acquired the property of the Steinway and Hunters Point Railroad Company, which appears to have succeeded to the properties of the various companies heretofore mentioned.

On March 21, 1893, the common council of Long Island City granted a franchise to the Steinway Railway Company for a number of extensions, including one upon Broadway from Steinway avenue to the Old Bowery Bay road and along the latter to Jackson avenue, upon certain conditions, one of which provided:

"This consent is given upon the express condition that Article 4 of the General Railroad Law of the State of New York shall be complied with."

Exhibit No. 75 indicates that, prior to October 8, 1895, the company constructed its track on that part of Broadway between Steinway Avenue and Newtown Road.

On October 8, 1895, the common council of Long Island City granted its consent for the construction of an extension, along Newtown road from Broadway to Jackson avenue, and one of the conditions imposed was:

"That the provisions of Article 4 of the Railroad Law of the state of New York pertinent thereto shall be complied with."

According to Exhibit No. 75, this short extension was constructed by the company in 1896.

Another consent given to this company by the common council of Long Island City sometime in 1895 (filed with the clerk of Queens county on May 7, 1896) was for a route along Third street from Jackson avenue to a point west of West avenue.

That consent also required compliance with the provisions of Article 4 of the Railroad Law.

The Steinway Railway Company was merged into the New York and Queens County Railway Company by certificate filed with the secretary of state on September 16, 1896.

Franchise Contract of June 10, 1909.

The only additional franchise that need be referred to, and one to which the counsel for the Receivers calls particular attention, was that obtained under contract, dated June 10, 1909, between the city of New York and the New York and Queens County Railway Company. That company, incorporated June 26, 1896, became the owner and operator of the Steinway Lines as the result of the merger of the Steinway Railway Company on September 16, 1896. A part of the route of one of these lines—the Dutch Kills or Astoria Line—was along:

Pierce avenue (from Debevoise or Second avenue), First avenue, Ridge Road, Academy street and Jane street to Jackson avenue.

The agreement of June 10, 1909, authorized the New York and Queens County Railway Company to construct and operate an extension, along Debevoise avenue between Pierce avenue and Jackson avenue, upon certain conditions including the following as to fare:

"Twelfth—The rate of fare for any passenger upon said railway shall not exceed 5 cents, and the company shall not charge

any passenger more than 5 cents for one continuous ride from any point on said railway, or a line or branch operated in connection therewith, to any point thereof, or of any connecting line or branch thereof, within the limits of the city.

. . . . . .

"The rate for the carrying of such property over the said railway upon the cars of the company shall in all cases be reasonable in amount, subject to the control of the Board, and may be fixed by the Board after notice to the company and a hearing had thereon, and when so fixed such rates shall be binding upon the company, and no greater sums shall be charged for such services than provided for by it."

Another pertinent provision is found in § 3, which reads:

"This grant is also upon the further and express condition that the provisions of the Railroad Law pertinent hereto shall be strictly complied with by the company."

[1–4] It is clear from the record in this case that the proposed extension on Debevoise avenue was intended as a substitution for that part of the then existing route of the Dutch Kills line, above described. The company was required, as one of the further conditions of the city's consent, to take the necessary proceedings under the Railroad Law for the abandonment of that portion of its route and to remove therefrom its tracks and other equipment within sixty days after commencing the operation of the substituted route. The record shows that the old route was subsequently abandoned, that the tracks thereon were removed and that the tracks on the substituted route on Debevoise avenue, between Pierce and Jackson avenues, were constructed and placed in operation on December 4, 1909.

Apparently the change in the route on the Dutch Kills line was made as result of the city's request. The former Public Service Commission for the First District on July 2, 1909, approved of the proposed construction and operation on Debevoise avenue, from Pierce avenue to Jackson avenue. That approval was given pursuant to a recommendation contained in the opinion of Commissioner Bassett, who said, among other things (Re New York & Q. County R. Co. 1 P. S. C. R. (1st Dist. N. Y.) 697, 699):

"For the reason that this route crosses the plaza of the Queensboro Bridge, and the present location of the company's tracks seriously interferes with the proper development of the plaza for transit purposes, the company, *at the request of the city,* made application to the Board of Estimate and Apportionment to change that part of its Dutch Kills route above described so as to bring its tracks all the way down Debevoise avenue or Second avenue from the present turn at Pierce avenue to Jackson avenue at a point about two blocks northerly from the Queensboro Bridge Plaza."

Section 29 Inapplicable.

The Receivers' claim that under § 29 of the Public Service Commission Law they have the right to increase to 7 cents the existing rate of 5 cents charged on the Steinway Lines after thirty days notice to the Commission and publication for a like period of the proposed rate unless it is suspended by the Commission in which event the new rate would become effective upon the expiration of the period of suspension (July 7th) unless the Commission in the meantime decided against its propriety. A similar contention was considered and rejected in two analogous cases recently decided—Case No. 2915, Re Dry Dock, E. B. & B. R. Co. (P.U.R.1929C, 305) and Case No. 2919, Re Eighth and Ninth Avenues R. Co. In those cases, this Commission held that § 29 has no application to the rates of a carrier which have been fixed by contract, statute or order of the Commission and that no changes could be made in rates so fixed except by agreement or after a determination by the Commission under § 49 of the Public Service Commission Law. For a discussion of the reasons leading to the Commission determination rejecting the proposed increases in the two cases mentioned, the opinion in the Dry Dock Company Case, *supra,* should be read.

Although all of the participants to this proceeding recognize that the 5-cent fare is the fixed lawful rate upon all of the Steinway lines, there is considerable doubt as to the authority under which that rate was so established. The Receivers contend that it was fixed by virtue of the fare provisions in the agreement of June 10, 1909, between the city of New York and the

New York and Queens County Railway Company with respect to the Debevoise avenue extension. I think it is doubtful, however, that the contract in question, authorizing in effect the mere substitution of a shorter route at the city's request, would result in the abrogation of all fare provisions in prior franchises. People ex rel. Garrison v. Nixon, 229 N. Y. 645, 129 N. E. 943. The 5-cent fare on the Steinway lines was not established by the contract of June 10, 1909, as that rate had been in effect prior to that time but just when it was first charged the record does not disclose. After an examination of the documentary history of the Receivers' predecessors in the light of the applicable statutes and decisions, and in view of the present state of the record in this case, it seems to me more probable that the obligation to charge but 5 cents on the Steinway lines arose either (1) from franchises granted by Long Island City and particularly those granted in 1885 to the Steinway and Hunters Point Railroad Company or those granted in 1893 and 1895 to the Steinway Railway Company, or (2) from the leases of the properties and franchises of predecessor companies to the Steinway and Hunters Point Railroad Company, which later merged those companies. But it seems unnecessary at this time to attempt to decide more definitely the question as to what statute or contract caused the fixation of the existing rate on the Steinway lines. Irrespective of the authority under which it was fixed, I think it may be accepted as a certainty that the 5-cent fare is the fixed lawful rate. Accordingly, the holding in the Dry Dock Company Case, *supra,* and in the Eighth and Ninth Avenues Company Case is decisive here. Consequently the Receivers were not justified in attempting to increase the present fare by proceeding under § 29 of the Public Service Commission Law, and an order should be entered rejecting the revised tariff sheets providing for a 7-cent fare.

This disposition of the case makes it unnecessary to discuss any of the other matters arising in this proceeding.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

TOWN OF WEST NEW YORK

v.

PUBLIC SERVICE CO-ORDINATED TRANSPORT.

Commission — Jurisdiction over highway paving.

1. The Board cannot exercise its statutory powers to require the repair of highways damaged by reason of street railway operation, where there is no proof that the places sought to be repaired are in fact public highways, or that the damaged condition is a result of street railway operation, or that the company was obligated to repair such damage, p. 591.

Commissions — General jurisdiction — Highways — Repairs.

2. The general jurisdiction of the Board of Public Utility Commissioners applies only to the specific objects enumerated in the act and does not include the power to require utility companies to keep highways in repair, p. 591.

[June 27, 1929.]

COMPLAINT of a town against a transportation utility relating to the condition of certain highways; denied.

Appearances: Samuel L. Hirschberg, for town of West New York; Charles S. Straw, for Public Service Co-ordinated Transport.

[1, 2] Public Service Co-ordinated Transport operates a trolley line along a private right of way in the middle of what is known as Dewey avenue in the town of West New York. The tracks and the private right of way cross several intersecting streets, but whether the intersections are public highways or not, does not appear. The Transport, or its predecessors in times past, have placed cracked stone at these intersections and to this extent have paved them. These pavements are now out of repair.

The town of West New York has filed a petition with this Board praying that the Transport be required to "cause the said condition to be corrected so as to make the same safe for public use and travel."

No order can be made under Chapter 129 of the Laws of 1927 because there is no proof that the places of intersection are public highways or that the pavements have been damaged by reason of the operation of the street railway cars, or that the company,

at the time of the passage of the act, was obligated to repair such damage.

Counsel for the town does not, however, rely upon this statute but rather upon the general jurisdiction of the Board under the Public Utility Act of 1911. The general jurisdiction of the Board applies only to the specific objects enumerated in the act and these do not include the relief prayed for by the Town.

The petition of the Town of West New York must be denied.

MISSOURI PUBLIC SERVICE COMMISSION.

RE OZARK UTILITIES COMPANY.

[Case No. 6193.]

RE ELECTRIC UTILITIES COMPANY OF JOPLIN.

[Case No. 6203.]

Certificates of convenience and necessity — Choice of applicants — Electricity.

1. The fact that one electric company's rates are of such a type as would encourage the greater use of electricity should be considered in determining which of two companies should be authorized to operate in a certain territory, p. 597.

Certificates — Choice of applicants — Cost of extensions.

2. The cost of extension of electric service to rural consumers should be considered in determining which of two companies should be given authority in a specific territory, p. 598.

Certificates — Choice of applicants — Electricity.

3. A point to be taken into consideration in determining which of two applicants should be awarded authority to furnish electrical service in a specific territory is whether or not the extension to the new territory to be served logically and geographically falls into the territory of one or the other, p. 599.

Certificates — Choice of applicants — Special offer.

4. It is not fair, in determining which of two applicants should be awarded authority to render electrical service in specific territory, to compare the offer by one company of a special condition to prospective customers to be furnished service under the proposed extension, where there is nothing in the company's rural schedule on file warranting the promise, p. 600.

[June 25, 1929.]

APPLICATION by two competitive electrical utilities for a certificate of convenience and necessity to construct and operate a distribution system in the same territory; one utility awarded authority and application of the other denied.

By the **Commission**: This cause is brought before the Commission by the filing of two applications; one being the application of the Ozark Utilities Company of Pleasant Hill, Missouri, hereinafter referred to as the Ozark Company, for an order of the Commission granting said company a certificate of convenience and necessity to construct, maintain, and operate a 3-phase, 6,600 volt electric transmission line beginning at a point near the village of Albatross on state highway No. 66, thence east along said state highway to the village of Halltown, and for a certificate of convenience and necessity for the construction, maintenance, and operation of an electric distribution system in said village of Halltown, all in Lawrence county, Missouri; the other being the application of the Electric Utilities Company of Joplin, Missouri, hereinafter referred to as the Electric Company, for a certificate of convenience and necessity to construct, maintain and operate a 3-phase, 6,600 volt electric transmission line beginning at a point near the city of Ash Grove in Greene county, thence south approximately four miles, thence west approximately two miles, thence south approximately three and one-half miles to the village of Halltown in Lawrence county, and for a certificate of convenience and necessity to construct, maintain, and operate an electric distribution system in said village of Halltown.

Both cases were heard by the Commission, after due notice had been given, at the Commission's hearing room in Jefferson City on the 24th day of January, 1929, at which time and place all interested parties were given an opportunity to be heard and the matter was submitted on the record.

The application of the Ozark Company was filed on December 4, 1928, and said company submitted as proof that it had received the consent of the local inhabitants of the village of Halltown and vicinity petitions signed by the various inhabitants and interested parties of said village, and stated that the village is unincorporated. The original petition, however, is amended by a supplemental petition, filed December 24, 1928, in which

the Ozark Company states that since filing its original petition it has ascertained that the village of Halltown is incorporated and has secured from the board of trustees of said village a franchise authorizing it to construct, maintain, and operate an electric distribution system over and along the streets of said village. The date of the ordinance granting the Ozark Company a franchise is December 12, 1928.

The application of the Electric Company was filed December 14, 1928, and was accompanied by a franchise granted on November 28, 1928, by the village of Halltown to said company.

The application of the Ozark Company was heard first and was immediately followed by the hearing of the application of the Electric Company, and since the issues in both cases have as the terminus of the respective transmission lines proposed the village of Halltown, for the purpose of furnishing electric service in said village, the cases are more or less conflicting. With such conditions obtaining, the two cases will be consolidated for the purpose of determining the issues involved.

The Ozark Company furnished by an electric transmission system electric service to some forty towns and villages located mostly in the counties of Hickory, Polk, Cedar, Vernon, Barton, Dade, and Lawrence. One of its main north and south transmission lines extends south from one of its hydro-plants at Caplinger Mills through Greenfield, Dade county, to Miller in Lawrence county, which lies south of Dade county. From Miller the Ozark Company has a transmission line extending west and south to its Sarcoxie district, and also from Miller south to the village of Albatross on highway No. 66, thence west on said highway. The transmission line it is now proposing would extend east from Albatross a distance of approximately thirteen miles. On that extension the evidence shows the Ozark Company expects to furnish electric service to some eighty-six or ninety customers, fifty of which, it is estimated, will be located in the village of Halltown. To furnish this service the company first proposed to build a 3-phase, 2,300 volt transmission line from Albatross to Halltown.

The Electric Company is engaged in the operation of electric transmission and distribution systems and furnished electric service in the counties of McDonald, Greene, and Stone, and is

associated with the Empire District Electric Company and operates its transmission system in connection with the transmission system of the Empire District Electric Company. The Electric Company is now furnishing service in the cities of Ash Grove, Walnut Grove, Bois D'Arc, and Willard which lie to the north and east of the village of Halltown. The Empire District Electric Company with which the Electric Company is associated and from which company the Electric Company purchases a greater part of its electric energy is now furnishing current wholesale to the city of Mount Vernon, which lies to the south and west of Halltown. The transmission line proposed by the electric Company to furnish electricity to the village of Halltown will be approximately ten miles in length extending south of Ash Grove approximately eight miles and west two miles. The Electric Company claims that on this extension of ten miles it will serve eighty-seven customers.

A witness of the Ozark Company testified that the extension from Albatross to Halltown and the distribution system in the village of Halltown will cost $9,299.18 from which it estimates a probable revenue of $3,372. The Electric Company estimates the cost of the extension from Ash Grove proposed by it and the distribution system at Halltown will be $13,492, from which it expects a gross revenue of $2,515.

The Ozark Company offers in support of its claims that it should be authorized to serve the village of Halltown, comparisons in its business in four towns similar in size to that of Halltown that it now serves, namely the towns of Arcola, Iantha, La Russell, and Milford. The comparisons are given for the purpose of showing the differences in the revenues that the company would have obtained in the above towns with the rates it has in effect applying and the rates which the Electric Company has in effect in the territory of Halltown.

The data by the Ozark Company in its exhibits and testimony given at the hearing are as follows:

	Arcola	Iantha	La Russell	Milford
Population	150	300	173	76
Number of meters	36	48	46	43
Saving to the population of the Ozark Company rates over the Electric Company's rates	$97.75	$211.93	$3.49	$80.28

Furthermore, from the data furnished by the Ozark Company it is found that the average number of kilowatt hours sold per consumer per month is as follows:

Arcola	10
Milford	12
Iantha	12
La Russell	13

The Electric Company, in support of its claim that the rates it would charge for service in the village of Halltown would be less than the rates of the Ozark Company, submits an analysis of its business in the villages of Willard and Bois D'Arc for the months of August, September, October, and November, and states that the average consumption in those towns for commercial and residence lighting varies during those months from 21 to 36 kilowatt hours per month. The average rate per kilowatt hour sold obtained during that time from each of the towns varies from 9.05 cents to 9.2 cents per kilowatt hour in Willard and from 6.30 cents to 7.22 cents per kilowatt hour in the village of Billings. That company also stated that during the month of November its average rate for commercial and residence lighting service in the town of Bois D'Arc was 7.05 cents per kilowatt hour.

Each of the applicants appears to consider that if it is authorized to furnish electric service in the village of Halltown that its billing will be comparable with that shown above for the respective towns used for examples, and that the rate per kilowatt hour and the amount of current consumed per month per consumer will be similar to the data just given by each.

The details of the cost of the transmission line from Albatross to Halltown as submitted by the Ozark Company on its Exhibit G is as follows:

24 Poles per mile for 13 miles—312 poles @ $9.43	$2,942.15
39 Miles of #4 A. C. S. R.—3978# @ 26¢ per pound	1,012.28
Tie wire	30.00
Labor setting poles, stringing wire, etc.—$225 per mile	2,925.00
Anchors—2 per mile @ $2.75 (25)	68.75
36 Lightning arresters, 6600 volts @ $18	648.00
15 Transformers 6600 to 110-220 volts 1½ kva. $60	900.00
3 Transformers 6600 to 110-220 volts 5 kva. $91	273.00
Incidentals	500.00
	$9,299.18

This sum of $9,299.18 is the same figure mentioned above as being given by one of the Ozark Company's witnesses as the total of the construction of the transmission line and distribution system.

The Ozark Company laid considerable stress on the claim that it was proposing to furnish service to all the prospective consumers on state highway No. 66 adjacent to the proposed line without an installation cost or bonus being required of each consumer, and that it would furnish the current to the consumers at a lower rate than offered by the Electric Company. The Electric Company admitted that it had required deposits of some of the rural consumers who reside along the line it has proposed to construct but claims that, under the schedule of rates it is charging, the consumers will be charged less per kilowatt hour for current to be used than would be paid for the service if rendered by the Ozark Company.

The cost of the extension as shown on Exhibit 1 submitted by the Electric Company is as follows:

10 miles transmission line @ $900 per mile	$9,000.00
Halltown distribution lines and poles	1,218.00
Halltown distribution transformers	250.00
31 rural connections @ $75	2,325.00
Meters	700.00
	$13,493.00
Less donation made by customers en route	1,000.00
	$12,493.00

The matter finally boils itself down to which of the two should furnish the service.

[1] The evidence shows that the Ozark Company furnishes in other towns similar to the village of Halltown electric current at rates that begin at 12 cents per kilowatt hour and from the consumers' data furnished by this company from those towns the number of kilowatt hours used per month per consumer averages tend to thirteen kilowatt hours. The Electric Company shows that it is furnishing in towns similar to the town of Halltown from an average of twenty-six to thirty-one kilowatt hours per month per consumer and charges a service charge of $1 per month, plus a rate beginning at 5 cents per kilowatt hour. Comparison of the two schedules as shown by Exhibit N submitted

by the Ozark Company shows that for consumptions of less than fifteen kilowatt hours per month per consumer the rates proposed by the Ozark Company are the more favorable rates for the consumers but for consumptions above fifteen kilowatt hours per month, the rates proposed by the Electric Company are the more favorable, so it is evidence that it is only a matter of the amount of consumption of current per month which schedule would be the more favorable to the consumer. It appears that the Electric Company's rates encourage the greater use of electricity.

[2] Another question that is to be given consideration in determining which company should be given the authority herein requested is the matter of the cost of the extension. The Electric Company's exhibit, as set out above, showing the cost of the transmission line and the distribution system as proposed by the Electric Company shows that the complete cost would be $13,493. The cost of the transmission line as proposed by the Ozark Company is $9,299.18. This appears to include only the transmission line from Albatross to Halltown and nothing for the distribution system in the village of Halltown or for the customers' meters. Neither does it show anything for the reconstruction of the single phase, 2,300 volt transmission line to a 3-phase, 6,600 volt transmission line from the village of Miller south, and for the necessary substation at Miller to convert the current from the transmission voltage of 13,200, which is the incoming voltage at Miller, to 6,600. Neither does it show what the cost would be for a substation at Albatross to deliver single phase, 2,300 volt current at Albatross to the transmission line going west from Albatross which the Ozark Company now has in operation, nor the cost of a different voltage should that line be changed. The evidence shows that the transmission line from Miller South to Albatross and thence west is a single phase, 2,300 volt transmission line. Witness for the Ozark Company testified that it had been given permission to construct the line from Miller to Albatross, thence west along highway No. 66, as a 3-phase, 2,300 volt transmission line and reference to the Commission's records in which authority for that line was granted shows that the Ozark Company in Case No. 5840 made application to the Commission for a certificate of convenience and necessity to con-

struct a 3-phase, 2,300 volt line along that route. No information has been given the Commission as to why the line was not constructed as requested and as granted. The Commission found that the public convenience and necessity required a 3-phase transmission line and the applicant found differently.

[3] Another point that must be taken into consideration in granting a certificate of convenience and necessity to utilities operating in competitive territory is whether or not the extension to the new territory to be served logically and geographically falls in the territory of one company or the other. The Electric Company claims that its lines as proposed to serve the village of Halltown will be shorter than the line proposed by the Ozark Company and that Halltown "is in a territory, which geographically is fairly territory of the Electric Utilities Company." Exhibit I filed by the Ozark Company shows that the transmission system of the Ozark Company lies to the west of Miller and Albatross and that to serve Halltown would require an extension to the east of that system. Exhibit 18 filed by the Electric Company shows that the Electric Company and its associated company's transmission system serve a territory southwest of Halltown, passing some 7½ miles south of Halltown to the east to the town of Republic, and from Republic north passing within 8 miles and to the east of Halltown, and continuing thereon north some 9 miles. The line then extends west to Ash Grove which lies north of Halltown some 8½ miles and east of Halltown 2 miles. The extension as proposed by the Ozark Company would make Halltown a terminus of the line with no probable justification of a future extension to the line in any direction to include it in a loop for the purpose of protecting the service should the future requirements demand it, whereas the extension proposed by the Electric Company continuing from Ash Grove south to Halltown and thence 8 miles south to the present transmission system of the associated company of the Electric Company would place Halltown on a line that would render service from more than one direction. Furthermore, it is claimed by the Electric Company that the extension proposed by it would be available to furnish service to the village of Lawrenceburg which is located

some 1½ miles from the route of the line proposed by said Electric Company.

[4] The Ozark Company asks that consideration be given to its application because of its proposal to furnish electric service to customers who will be located along the transmission line which it proposes on state highway No. 66. It points out that the Electric Company has required and obtained deposits from prospective customers who reside along the route of the transmission line proposed by it. The Electric Company admits that it has taken bonuses from some of the prospective customers but states that it has done so in conformity with its rule on file with the Commission fixing rates and conditions under which the Electric Company will furnish electric service to customers residing in rural territory. If the Electric Company has required such bonuses in conformity with that rule, it has complied with the law in that respect and could not agree to make the extension and furnish the service in any other manner.

The files of the Commission show that the Ozark Company has on file a schedule of rates and rules covering the territory in which it furnishes electric service which contains a rule reading as follows:

"The customer shall be required to pay for all farm line extension."

Our understanding of the rule is that the rural customer is required to pay for the entire cost of the extension, including the transformer and other equipment. There is nothing in the company's rural schedule on file with the Commission to indicate that the rule does not apply in all territory furnished by it and it does not appear fair to consider the offer of a special condition to prospective customers to be furnished service under the extension proposed herein.

Various and sundry petitions have been filed by both utilities asking that the company named in the particular petition be authorized to serve the village of Halltown but the claims made in the petitions pleading for one company practically counterbalance the claims made in the petition of the other company. The Commission is, however, in receipt of a letter from the village of

Halltown signed by the chairman of the village board, which reads as follows:

Halltown, Mo.
Jan. 31, 1929

To the Public Service Comm. Jefferson City, Missouri.
Gentlemen:

This is to say that the town of Halltown did not know of the last rates submitted to the Commission at the hearing a short time ago by the Ozark Utilities Company. They gave us one and submitted another to the Commission. We want to say that the town of Halltown is in favor of the Empire District Electric Company serving the town. We believe the Empire will serve the county as well as the Ozark and we think the Empire will be better for the town.

Yours truly,
(Signed) Roy Hall, Chairman

In consideration of all the evidence before the Commission, it is of the opinion that the application of the Ozark Company should be denied and that of the Electric Company granted.

Stahl, Chairman, Ing, Hutchison, Porter, and Hull, Commissioners, concur.

INDIANA PUBLIC SERVICE COMMISSION.

GRANT A. KARNS et al.

v.

INDIANAPOLIS STREET RAILWAY COMPANY.

[No. 9500.]

Service — Street railways — Skip-stop — Referendum.

The Commission, in view of the result of a referendum among street car patrons, showing 2,888 against, and 1,757 in favor of, skip-stop proposals, was of the opinion that no further proceeding should be taken in the matter although such a referendum did not bind the Commission.

[June 14, 1929.]

COMPLAINT by street railway patrons against the operations of a certain traction line; matter dismissed.

P.U.R.1929D.

Ellis, Commissioner: On August 25, 1928, Grant A. Karns et al. filed with the Public Service Commission of Indiana a petition in the above entitled cause outlining a proposed skip-stop plan of operation for the East Washington street line of the Indianapolis Street Railway. After a hearing the Commission denied the original petition filed, but directed the company "to prepare and submit to this Commission in writing within thirty days a skip-stop plan for operation on the East Washington street line." An extension of time for compliance with the above order was granted by the Commission and on April 3, 1929, the company submitted a proposal for a referendum on the skip-stop plan of operation, said referendum to be participated in by patrons of the East Washington Street line.

On June 7, 1929, the Commission received the following communication from the company:

"In compliance with Case No. 9500, "First Supplemental Order, Approved April 12, 1929, in the Matter of the Petition of Grant A. Karns, et al. v. Indianapolis Street Railway Company (P.U.R.1929D, 314)—Change Plan of Operation on east Washington Street Car line, "the following report is made:

"An election was conducted Wednesday, May 29, 1929, to determine the wishes of patrons of the car line concerned.

"The ballot form approved by your Commission was provided. Twenty thousand ballots were printed and distributed on the street cars. Conductors were instructed to hand a ballot to each passenger, so far as this could be done without neglect of other duties. Ballot boxes were provided on each car, and the voter could either personally deposit the ballot, or hand it to the conductor or motorman who would deposit it.

"The ballot boxes were sealed. Employees were instructed not to vote or to influence voters. The boxes were turned in at the offices of the street railway company, and the seals were not broken until authorized by Mr. Ed Hunter, Secretary of the Chamber of Commerce, who provided for the counting of the ballots. The result follows:

In favor of skip-stop	1,757
Against skip-stop	2,888
Total votes cast	4,645
Majority against skip-stop	1,131

P.U.R.1929D.

All ballots have been preserved.

The election was supervised by the undersigned, by direction of Mr. James P. Tretton, General Manager of the Indianapolis Street Railway Company.

Sample of ballot enclosed.

Yours very truly,
INDIANAPOLIS STREET RAILWAY COMPANY
By Geo. H. Healey,
Director of Public Relations."

The letter discloses that a majority of the patrons of the East Washington street line participating in the referendum opposed a change from the present plan of operation to a skip-stop plan.

While a referendum such as this cannot be in any way considered binding on the Commission, nevertheless, in view of the attitude of the patrons as expressed by the result of said referendum the Commission is of the opinion that no further proceedings should be had in this matter at this time and that this cause should be closed of record.

It is therefore *ordered* by the Public Service Commission of Indiana that this cause be closed of record.

McCardle, Singleton, Ellis, McIntosh, West, Commissioners, concur.

OKLAHOMA CORPORATION COMMISSION.

RE L. C. GILES.

[Cause No. 9068.]

RE OKLAHOMA RAILWAY COMPANY.

[Cause No. 9070.]

[Order No. 4647.]

Certificates — Preference between applicants — Priority of application — Carriers.

1. Notwithstanding the usual policy of the Commission to award a certificate of convenience and necessity to that applicant who first files an application, a railway company applying a few days subsequent

to the filing of an application by an individual was awarded preference where it was ready, willing, and able to render the motor service required and public convenience and necessity in general demanded the protection of its railway investment from unwarranted competition, p. 608.

Certificates of convenience — Choice of applicant — Rail and bus.

2. A railway company ready, willing, and able to render motor service, was granted authority for the same rather than an individual operator, where a denial of such authority would seriously impair its investment and public convenience and necessity generally, which required the continued operation of its railway and freight service, p. 608.

[April 25, 1929.]

APPLICATION of an individual and a railway company for a certificate of convenience and necessity to operate over the same territory; denied to the former; granted to the latter.

By the **Commission**: The above entitled cause came on for hearing on December 18, 1928. By agreement of the parties in both of said causes, they were consolidated for the purpose of taking testimony, and which agreement further provided that all testimony introduced should, where relevant and material, be considered applicable to both applications and also to the responses of both of said parties filed in said causes.

A pleading of the Oklahoma Railway Company filed in both of said causes set forth that in its opinion the public convenience and necessity did not require any additional service over the proposed route, but that if the Commission should find that the public convenience and necessity did require additional service or motor carrier service between Oklahoma City and Norman, then the applicant, Oklahoma Railway Company, was ready, willing, and able to render said service, and prayed the Commission for permission so to do; further that to permit anyone else to render the service would cause such additional losses in the operation of its interurban line that it would, from necessity, have to abandon said line and probably its other interurban lines, either of which would discommode the public convenience and necessity much more than it would be benefited by the granting of said certificate.

That the response of the said L. C. Giles alleged that he had a prior application pending; that the same had been pending

for more than two years; that the application of the Oklahoma Railway Company was not made in good faith.

The Oklahoma Railway Company and L. C. Giles, having announced ready for trial, the hearing was commenced.

Whereupon the Oklahoma Transportation Company asked leave to intervene in both of said causes for the purpose of protesting the granting of the application and praying that its restrictions be removed.

Whereupon testimony and evidence was introduced by the various parties in support of their contentions. The hearing in said causes continuing throughout several days.

On January 11, 1929, the Commission, through F. C. Capshaw, as Chairman, and F. C. Carter, as Commissioner, made, entered, and promulgated its Order No. 4568 in these causes. Commissioner C. C. Childers did not sign said order though he had participated in said hearing.

It was found in said order that due to the facts stated therein, the public travel between Oklahoma City and Norman was sufficient to warrant the issuance of a license for the transportation of such of the public who desired to travel by motor bus between said points.

It was further found that L. C. Giles had filed his application prior to the filing of the application of the Oklahoma Railway Company and for that reason the said L. C. Giles was entitled to some preference; that the Oklahoma Railway Company was entitled to some preference by reason of the fact that it owned and operated an interurban line between said points and was ready, willing, and able to render any additional service which the public convenience and necessity might require.

It was the order of the Commission, based upon the above findings that upon compliance with the law and the order and rules of the Commission, a certificate of convenience and necessity be issued to the said L. C. Giles to operate seven round trips between Oklahoma City and Norman. That the rate of fare to be charged would be 55 cents one way or $1 per round trip. Fares for intermediate points were fixed. The schedule time for leaving Norman and Oklahoma City was set forth in said order. A similar certificate was directed to be issued to the Oklahoma Rail-

way Company for seven round trips per day at the same rates of fare. The departing time was arranged so that the busses of said parties would depart at every other hour.

The protest and intervention of the Oklahoma Transportation Company was duly denied.

To this order all the parties excepted. The Oklahoma Railway Company stating its intention to immediately move to set said order aside.

Thereafter and on January 14, 1929, the Oklahoma Railway Company filed its motion asking that that part of said order wherein a certificate was granted to the said L. C. Giles, be set aside and a rehearing granted, and that pending said rehearing the certificate of the said L. C. Giles, if issued, should be suspended. The motion was presented to the Commission in conference on the date the same was filed. The Commission ordered the hearing thereon continued to 9:30 A. M. on January 15, 1929, and ordered copies of said motion and petition to be served on the attorneys of the Oklahoma Transportation Company and L. C. Giles so that they might have an opportunity to appear and protest the granting of a rehearing. The Secretary of the Commission was directed, and did, notify by telephone, each firm of attorneys representing the parties in said causes.

At the time set for said hearing, the various parties were present by their attorneys, and L. C. Giles, by his attorneys, filed his special appearance and objected to the jurisdiction of the Commission. The Oklahoma Transportation Company filed a motion asking that the entire order be set aside and that it be granted a rehearing. The hearing on said motions was held before Chairman Childers and Commissioners Hughes and Capshaw.

Thereafter and on January 16, 1929, Journal Entry No. 1645 was entered in both of said causes, by the terms of which that part of said order, which granted a certificate of convenience and necessity to the said L. C. Giles, was vacated and set aside and the effectiveness of the certificate issued to the said L. C. Giles was suspended pending a rehearing in said causes.

Immediately thereafter the rehearing was set for hearing on

January 30, 1929, and notice of the time and place of said rehearing in said causes was then duly given to all the parties.

On January 30, 1929, (said rehearing extended over into January 31, 1929), the said causes were duly called for rehearing. The said L. C. Giles was present by his attorneys, J. B. Dudley and John Lutterell. The Oklahoma Railway Company was present by its attorney, K. W. Shartel. The Oklahoma Transportation Company was present by its attorneys, George Short and Earl Brown.

Thereupon all of said parties having announced ready, there was presented a special appearance and plea to the jurisdiction of the Commission on behalf of the said L. C. Giles, which said plea to the jurisdiction was duly overruled by Chairman Childers and Commissioner Hughes for the same reasons stated in Journal Entry No. 1645; the same objection having been made prior to the making of that Journal Entry. Commissioner Capshaw dissented. Exceptions were allowed L. C. Giles.

Thereupon the Oklahoma Railway Company produced evidence supporting the allegations in its motion and petition,—

(a) That the public convenience and necessity did not demand, at most, bus service in excess of that it prayed the Commission to render in its application, and under its pleading filed herein; which said service, for the reason stated in its pleading, it was entitled to exclusively render.

(b) That its interurban business was being operated at a loss even in excess of that which it had been able to show at the first hearing herein.

(c) That to permit the transportation of passengers by bus between Norman and Oklahoma City by others, would increase its losses to such an extent that its Norman line and probably its other interurban lines would have to be abandoned.

Thereupon the Oklahoma Transportation Company introduced evidence which it claimed supported its motion to set aside Order No. 4568 in its entirety and permit it to transport passengers between Oklahoma City and Norman and intervening points in rendering the bus service it was authorized to render between Oklahoma City and Ardmore.

L. C. Giles produced no evidence but cross-examined the witnesses offered by the various parties.

After full and careful consideration of all the testimony introduced at the various hearings herein, including the further examination and study of the transcript of testimony taken at the original hearing, the Commission is of the opinion and finds, in addition to such findings of fact as have been heretofore set out herein:

[1, 2] 1. That the city of Norman, Cleveland county, Oklahoma, is approximately twenty miles in a general southerly direction from Oklahoma City. That Norman is on the line of the Atchison, Topeka & Santa Fe Railway Company, extending from Kansas City, Missouri, to Galveston, Texas, over which are operated four passenger trains each way daily between Oklahoma City and Norman. That the applicant, Oklahoma Railway Company operates an interurban line of railway extending from its terminal station in Oklahoma City through which all of its interurban lines and city cars and busses operate for the purpose of picking up and discharging passengers, thence to its station in Norman which is located on the main street of that town, a block or two west of the center of the business district thereof. That the applicant gives hourly service each way over this line commencing at approximately 5 o'clock in the morning and ending approximately midnight of each day. That the rate of fare charged by said applicant on its interurban line from Norman to Oklahoma City is as follows:

45 cents one way. 85 cents round trip. Commutation books may be purchased which give the passenger twenty round trips for $11, or 55 cents round trip, 27½ cents each way.

Passengers coming into Oklahoma City from Norman, are entitled to a transfer upon which they may ride to any part of the city on applicant's busses or street cars. Transfers issued from busses or street cars to passengers going to the Oklahoma City terminal for the purpose of going to Norman are accepted on the interurban cars. The city rates of the applicant are 8 cents or two tokens for 15 cents. Due to this transfer privilege the rates of the railway company to Norman in effect amount

to 7½ cents less than above stated,—that is, 37½ cents for straight fare or 20 cents if commutation books are used.

2. The State University is located at Norman and a large number of students live in Oklahoma City with their parents or work in Oklahoma City and attend the University. A considerable number of people live in Norman and work in Oklahoma City. The ability of most of these students to live in Oklahoma City, and most of the people who live in Norman and work in Oklahoma City, is dependent upon the aforesaid commutation rates of the applicant, railway company.

3. There is a considerable number of people living between Norman and Oklahoma City served by the interurban line. There is an unusually large percentage of unoccupied seats on the interurban cars. During rush hours additional facilities are provided. The interurban lines of the applicant which are operated as one system, include the line from Norman through Oklahoma City to Guthrie, Logan county, Oklahoma, and Oklahoma City to El Reno, Canadian county, Oklahoma. These lines, as a whole, are doing a little more than paying actual operating expenses. This is true of the interurban line between Oklahoma City and Norman. The service rendered on said interurban line is reasonably satisfactory.

4. L. C. Giles, in connection with one Green, owned a motor carrier operating between Oklahoma City, via Moore and Norman to Ardmore, Oklahoma. At the time the certificate was granted for the operation of this line, no application was made to transport passengers between Norman and Oklahoma City. The certificate was granted with that restriction. This line was sold to intervener, Oklahoma Transportation Company, under a contract whereby Giles sold to Green and Green in turn sold to intervener. Under the contract, Giles reserved to himself the right to apply for and all rights he might have in any applications theretofore filed for certificates from Oklahoma City to Norman. Applicant Giles does not have any investment in motor bus equipment or in any other property which would be used in operating motor carriers between Oklahoma City and Norman.

5. The granting of a certificate to operate a motor carrier to anyone other than the applicant herein would so reduce the

revenue received from applicant's interurban line that the same would be operated at such loss that this line would have to be abandoned. This loss would likewise affect the remaining interurbans and would probably result in their abandonment. Thus millions of dollars worth of property would be destroyed. A large amount of freight is transported over these lines. Abandonment would deny this service to the cities served as well as the public at large.

6. Bus travel at present is popular with certain people and there is a substantial part of the traveling public which prefer and demand bus service. This situation exists with reference to travel between Norman and Oklahoma City as is shown by the proof of all parties, and for that reason the public convenience and necessity requires that such service be given subject to the same being co-ordinated with the service rendered by the applicant railway company on its interurban line and subject to said service being rendered by the applicant in order to prevent destruction of said interurban line would discommode and work to the disadvantage and not to the convenience of the public, as well as the shippers and travelers. Likewise, for the reasons stated, the public convenience and necessity does not demand nor would it be served by a strictly independent bus service.

7. The applicant, Oklahoma Railway Company, is in good faith and as the proof shows, is ready, willing, and able to place in operation such motor carriers as the Commission finds the public convenience and necessity demands. The applicant is operating busses in Oklahoma City and has experience in the operation thereof and its responsibility, financial resources, and permanency are established. On account of its large organization it is better fitted and qualified than the respondent or intervener for the rendering of said service. The public will also be better and more cheaply served by the Oklahoma Railway Company for the reasons herein stated and also because of the use of its large terminal facilities in Oklahoma City, and the issuance of transfers without additional charge to persons desiring to use its bus service.

8. That the application of the said L. C. Giles for a cer-

tificate to operate a motor bus between Oklahoma City and Norman was filed a day or two prior to the application of the Oklahoma Railway Company. That ordinarily it has been the custom of the Commission, all others matters being equal, to grant the certificate to the applicant first making application therefor. In the instant case, however, the situation is entirely different. To permit the applicant, L. C. Giles, to render the proposed service would cause inconvenience to the public in a much greater degree than it would be convenienced, for the reasons stated.

Such being the facts, preference and priority should be given to the Oklahoma Railway Company, since the Oklahoma Railway Company has offered to render said service, and said company is ready, willing, and able to render the same.

That the alleged applications filed long prior to the application involved herein, by the said L. C. Giles, were never completed and were not pending applications and in no way gave said Giles any prior rights to said route.

9. That the public convenience and necessity does not require the service proposed by the applicant, L. C. Giles. The public convenience and necessity requires only such motor carrier service as may be co-ordinated with and supplemental to the service rendered by the Oklahoma Railway Company on its interurban line.

10. That in accordance with part of Order No. 4568, said bus service shall be rendered from the terminal of the railway company in Oklahoma City to a convenient point at or near the campus of the University of Oklahoma at Norman, the route to be followed to be the route shown in the Oklahoma Railway Company's application. Service shall be rendered at the rates of fare and under the tariff of said railway company on file with the Commission, covering the transportation of passengers between Norman and Oklahoma City and intermediate points on its interurban cars. That where the fares specified in the tariffs for the intermediate points are not applicable on account of the difference between the bus route and the interurban route, fares for said intermediate stops on the bus route shall be computed on the mileage basis to correspond with said interurban fares;

a complete tariff covering said intermediate points shall be filed with the Commission.

11. The applicant shall operate three schedules each way in the morning and three schedules each way in the evening, substantially in accordance with the schedules filed with the applicant's application; that more schedules would unnecessarily take business away from the interurban cars, tending to destroy the interurban service—the time not yet having arrived for a larger number of bus schedules.

12. The Oklahoma Railway Company shall file schedules showing the time of arrival and departure of its busses from Norman, Oklahoma City, and intervening stops.

13. That in accordance with the requirements as to filing of bond and liability insurance by the Oklahoma Railway Company, as provided for in said Order No. 4568, the certificate of convenience and necessity, therein directed to be issued to the Oklahoma Railway Company, shall be issued to it subject to the modifications herein contained.

It is therefore the *order* of the Commission, premises considered:

1. That it was not the Commission's intent, in Journal Entry No. 1645, to set aside that part of its Order No. 4568, wherein it denied the intervention, protest, and application of the Oklahoma Transportation Company, and that part of said order is reaffirmed, and the motion of the said Oklahoma Transportation Company to set said order aside and grant a rehearing is hereby denied for the reasons stated in Order No. 4568, and herein.

2. That part of said Order No. 4568, wherein a certificate of convenience and necessity was granted to the Oklahoma Railway Company was not set aside by Journal Entry No. 1645 and for the reasons set out therein and herein, that part of said order is reaffirmed subject to the modifications herein contained, and a certificate of convenience and necessity, upon compliance with the rules of the Commission and the statutes of the state of Oklahoma and the applicable provisions of said Order No. 4568 and this order, by the Oklahoma Railway Company, shall be duly issued to it.

3. That part of Journal Entry No. 1645, wherein the Com-

mission vacated and set aside that part of its Order No. 4568, wherein a certificate of convenience and necessity was granted to the said L. C. Giles, is reaffirmed for the reasons stated in said Journal Entry No. 1645 and herein, and said part of said order is vacated, set aside, and held for naught and the certificate and license issued to the said L. C. Giles under said order is hereby declared to be void and of no force and effect.

4. The Oklahoma Railway Company having offered to render such bus service as the Commission finds necessary, and at the rates of fare fixed by the Commission, and the Commission having reserved jurisdiction thereover in Order No. 4568, said order in so far as it fixes the number of schedules, the times of starting and ending such schedules, and the rates of fare, is modified to conform herewith.

5. Those parts of Order No. 4568 and Journal Entry No. 1645, which are referred to in support of the findings of fact and order herein contained, are referred to and made a part of this order.

6. Any order or any journal entry, or part of either inconsistent herewith, unless affirmed or modified herein, is hereby vacated, set aside, and held for naught.

NORTH DAKOTA BOARD OF RAILROAD COMMISSIONERS.

RE AMENIA TELEPHONE COMPANY.

[Case No. 3043.]

Rates — Telephones — Excess radius formula.

1. A line rent formula imposing a variable excess radius rate upon rural telephone patrons, giving each an allowance of 1¼ miles of line, was held to be objectionable because of the variable character of the rate, its susceptibility to diverse interpretations, and the fact that it illegally took control of rates from the Commission, p. 615.

Service — Jurisdiction of Commission — Managerial questions — Telephone toll routeing.

2. The fact that the rerouteing of certain toll traffic gives to a needy telephone company additional revenue does not give the Commission authority to interfere with the management of a long distance company in rerouteing such traffic originating on its own lines where public convenience is not in issue, p. 616.

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Service — Telephones — Size of community — 24-hour service.

3. A rural community having a population of only one hundred twenty-five people was held to be unable to support a 24-hour telephone service, and to be too small to support an independent exchange, p. 617.

Valuation — Property not useful — Soda fountain and barber shop.

4. A soda fountain and barber shop equipment cannot by any stretch of the imagination be classed as plant and equipment of a telephone company, p. 617.

[June 29, 1929.]

APPLICATION of a telephone company to increase rates; rates adjusted.

Harding, Commissioner: This proceeding came before this Commission on January 3, 1929, upon receipt of a petition of the Amenia Telephone Company of Amenia, North Dakota. This petition asked for financial relief in the way of an increase in rural telephone rates, an increase in the discount rule, and also asked to curtail service and use its toll lines for routeing all toll messages via Casselton, North Dakota. It also asked permission to provide for a so-called mileage charge that is variable according to the number of subscribers on the line and its length.

Considerable correspondence was passed and the matter was finally set for and came on for hearing at Fargo, North Dakota, on Friday, March 15, 1929, at 9 o'clock A. M.

Appearances: E. W. Chaffee, appearing on behalf of the Amenia Telephone Company; R. E. Monilaws, R. B. Eckert, H. Boyer, and E. H. Ford, appearing as subscribers of the Amenia Telephone Company; and A. J. McBean, Attorney, Omaha, Nebraska, appearing for the Northwestern Bell Telephone Company.

Testimony shows that all of the lines of petitioner are No. 12 Iron Metallic and that the subscribers are being given 24-hour service, seven days a week.

There were approximately seventy-four subscribers on the telephone system January 1, 1929, of which number fourteen were on the "Absaraka line," twenty were in the village of Amenia itself, with the balance scattered all over three townships.

A map, introduced as evidence, clearly shows that the history of the company, as set out in Exhibit No. 1, is correct and that the system was not conceived as a telephone system that would

make money for its incorporators but purely as a service arm of the Amenia and Sharon Land Company. The record shows that the telephone department was subsidized continuously by the land company. No clear thinking telephone man would propose building a telephone system into a community the large proportion of whose prospective consumers were tenants without getting these tenants as members of his company and subscribing towards the construction of the lines; even then the proposition would be of doubtful financial success.

There is nothing in the record to indicate that the service is not first class in all particulars and that the lines are kept in first class operating condition.

[1] The petitioner sets before this Commission a peculiar reasoning in economics. He proposes to increase his service by a straight 25-cent increase per subscriber in rural districts and then asks to increase his discount rate by amount of 50 cents or increase his net revenue 25 cents per subscriber per month. We believe his use of words to express his idea is unfortunate. It is true that coupled with this he asks permission to put into effect a "Line Rent Formula" as follows:

"Select any number of points on a telephone line. Divide the mileage in use beyond each point by the number of subscribers beyond, tabulating the results. Deduct 1.25 from each quotient, and the excess, if any, shall be the monthly charge for excess line rental. Use the combination giving the maximum revenue on each line, except that no subscriber may be charged in more than one combination." The formula was to be used with the assumption that an allowance is made of 1¼ miles of line to which each rural subscriber is entitled.

Taking this so-called formula into consideration, we find that there are several defects in its operation that make it objectionable to this Commission. First, the rate to any one particular subscriber would be variable; second, the formula is capable of several interpretations and it is doubtful if any two people would interpret it alike thus causing endless complaints; third, it takes control of rates out from under this Commission, which is illegal. The application of the formula will, therefore, be denied.

Cross examination of witness Chaffee discloses that he does

not believe even a 25-cent flat increase will help him, in fact, he states even this increase will lose him ten or twelve subscribers, and that a 50-cent increase would lose him approximately twenty-five subscribers or 50 per cent of his present rural subscribers. If flat increases will affect the total number of subscribers to this extent, then what will a variable line charge in addition to flat increase do to his subscribers. It is not necessary to answer, it is self-evident, especially where his own figures show a $2 increase for one farmer.

Testimony of the witness Chaffee thus shows that an increase in rates will cause a dropping off of subscribers thus creating a necessity for further increased rates for a lessened value of service—economically unstable.

The third section of the relief prayed for was that all toll traffic originating in Amenia or beyond Casselton should be routed over the toll line of the Amenia Telephone Company, thus making inoperative the present toll lines of the Northwestern Bell Telephone Company between these two points.

[2] Very little evidence was introduced to show the need of such an order other than that it would produce revenue to the Amenia Telephone Company and, in fact, nothing to show that this Commission had or has the authority to interfere in the management of the Northwestern Bell Telephone Company in the routeing of toll traffic originating on its own lines where *public convenience* is not an issue. Much has been said concerning the order of this Commission in Case No. 1454 relative to the establishment of the line Amenia-Casselton as a toll line. The order in that case does nothing of the sort. In fact it only provides that the Amenia Telephone Company stop furnishing *free toll service* over this line and make a charge therefor.

There being no pursuasive evidence or showing that the public will be any better served than at present, by requiring the Northwestern Bell Telephone Company to reroute its toll business into and out of Amenia via Casselton and the toll lines of the Amenia Telephone Company, and, as the amount involved in any case is not enough to disrupt the present working of the general toll business involved, this portion of the relief prayed for must be denied.

Evidence has shown that the Northwestern Bell Telephone Company is ready and willing to buy this Amenia-Casselton toll lead at a fair present valuation and thus eliminate duplication of facilities between these points and their attendant capital charges, but this offer has been refused.

What to do in a case of this kind is hard to determine, for the first portion of the relief asked for is admittedly of little actual value as testified to by Mr. Chaffee, who even offered to withdraw it. The second portion of the relief asked for must be denied on the grounds that this Commission cannot delegate its rate-making power. The third portion must be denied for the reasons stated above, thus leaving a possible relief in the savings to be brought about by the saving in salary of one operator by curtailing service eight hours, or a savings of $420 per year.

[3] Witness Chaffee testified by Exhibit No. 1 that his loss in calendar year 1928 will be approximately the same as 1927 and 1926, or approximately $950. This exhibit also shows that the village of Amenia has a population of only 125 and a common sense conclusion, bolstered by the opinions of qualified telephone men, is that it cannot support 24-hour service and is really too small to support an independent telephone exchange.

[4] Investigation of Exhibit No. 1 discloses the rather unhealthy condition of this company, especially in "Accounts Payable." It also discloses some peculiar plant and equipment items that can hardly be classed as Plant and Equipment by any stretch of the imagination, namely soda fountain and barber shop equipment.

Collection expenses have been high, as testimony developed, and it is argued that an increase in discount would cause more subscribers to discount their bills and thus save collection expenses. This we believe might result and our final order will take cognizance thereof.

Taking note of the testimony of Mr. E. W. Chaffee, the Commission is forced to the conclusion that the telephone company (the petitioner herein) was ill-conceived and that it will not be able to be made into a financial success, no matter what action the Commission may take.

In conclusion, the Commission is forced to give serious con-

sideration to providing additional revenue or decreased expense, or both, to the Amenia Telephone Company, and only two avenues are open to it. First, to make a flat increase in rural rates against its better judgment, and second, to reduce operating expenses. This the Commission will provide by reducing the hours of service and eliminating the necessity for an operator from 10 P. M. to 6 A. M., provisions to be made for any emergency calls at a charge of 10 cents a call, this charge to be assessed to prevent abuse of the service.

The Commission realizes that due to conditions surrounding the operation of this property and to the poor public relations now existing between the company and its patrons that the relief to be granted may not work as relief, but as a hardship. The only true relief will come by an improvement in relations between all parties so that the natural subscribers to this company's service are all reconnected to its lines.

An appropriate order will be entered.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

JAMES W. SHARP et al.

v.

NEWVILLE WATER COMPANY.

[Complaint Docket No. 7324.]

Valuation — Market value — Land — Water power.

1. An estimate of the market value of land used by a water company for a pumping station, calculated by using one-half of the amount of savings to the company by use of water power for pumping as against the use of electricity, was held unacceptable, p. 621.

Valuation — Reproduction cost — Obsolete building.

2. The fact that a building used by a water company for a pumping station is of obsolete construction and would not be reproduced under modern circumstances should be given due weight in determining the fair value of the company's plant, p. 622.

Valuation — Usable property — Fire emergency pump.

3. A second pump used for fire protection service, and obtained by the company following a complaint of the city, was held to be used and useful property for rate-making purposes, p. 623.

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Valuation — Going value — Water utility.

4. An allowance of $4,350 was made for going value of a water utility having a total rate base of $50,000, p. 623.

Depreciation — Accrued — Sinking fund basis — Water utility.

5. A 4 per cent sinking-fund basis was used in estimating accrued depreciation of a water utility, p. 623.

Return — Percentage allowed — Water utility.

6. Rates calculated to yield a return of 7 per cent were allowed a water utility, p. 623.

Valuation — Working capital — Water utility.

7. An allowance of $300 was made for working capital of a water utility having a total rate base of $50,000, p. 623.

Depreciation — Amount allowed — Water utility.

8. An amount of $225 was allowed for an annual depreciation fund of a water utility having a total rate base of $50,000, p. 623.

[April 23, 1929.]

COMPLAINTS against water rates; rates adjusted.

By the Commission: The complaint of James W. Sharp and others against the Newville Water Company, in which the borough of Newville has been allowed to intervene as a party complainant, is before the Commission at this time upon the application of the respondent company for rehearing and reargument and a reconsideration of the record, following the report and order adopted by the Commission December 2, 1928. The petition having been granted, and the parties heard in reargument, the record has been entirely re-examined, and, while the ultimate decision that the complaint must be sustained and the prior tariff again made effective is not changed, we are of the opinion that an entirely new discussion of the subject and the issuance of a revised report, are desirable.

The Newville Water Company, incorporated in 1896, supplies water to the inhabitants of the borough of Newville, Cumberland county. By tariff schedule P. S. C. Pa. No. 5, effective July 1, 1927, it superseded its prior tariff in effect, thereby substantially increasing its rates to consumers. The complaint of the individual complainants was filed prior to the effective date of the new tariff so that the burden of proof is upon the respondent company.

The water supplied by respondent is obtained from a spring on land owned by it, and is chemically treated before being pumped into the distribution mains. The company also owns

and operates a dam and forebay from which the power is obtained to operate the pumps used. Water is pumped directly into the mains, the excess over demand going into an equalizing reservoir, whence it flows by gravity back into the mains as needed. The population of the territory served is about 1,500, the company supplying about 300 consumers of which two are metered. The record indicates that development in Newville since respondent's incorporation has been slow and not extensive, and that considerable portions of the population are even now without public water service but depend on cisterns or other supplies.

Respondent company has outstanding $20,000 par value of 5 per cent bonds and $20,000 par value common stock. The entire stock issued is owned by a Mrs. McCarthy and her three daughters, who reside in Philadelphia and are the officers of the company. This Commission on January 7, 1919, in a proceeding brought before it by the borough of Newville, determined that the fair value of respondent's property as of that date was $28,000.

In order to determine the reasonableness of the rates here under attack, findings of the fair value of the used and useful property of respondent company and the gross revenue to which it is entitled under such valuation, are necessary. The evidence of record consists of the estimates by complainants and respondent of the reproduction cost new and depreciated of the property as of July 1, 1927, annual allowances for operating expenses and depreciation, annual gross revenue under the new tariff, and testimony of experts in support and explanation of said estimates. The reproduction cost estimates of complainants and respondent are both incomplete, however, being in several instances estimates of the cost of substitute properties which the parties deem proper under the circumstances. The record before the Commission in the prior rate order above mentioned and the estimates of value therein, together with annual reports of respondent for the years 1922 to 1926, inclusive, and the testimony of certain witnesses as to real estate values and general business conditions in Newville, are also of record.

The respondent estimates its reproduction cost new as of

July 1, 1927, at $75,710.76 and depreciated $67,474.05. The complainants' estimates are $55,147.23 and $40,237.52, respectively. The inventory on which respondent's estimate is based is taken from an inventory made in 1923 to which additions since that date have been made from the books. Complainants have adopted this inventory and the parties are agreed on the items of used and useful property. The chief differences between the two estimates are in the value of the dam site, dam and forebay, pumping station, and equipment, distribution reservoir, and accrued depreciation. As to other items of property the parties are in substantial accord.

[1] The tract of land on which the pumping station and dam are located contains about 17½ acres. This land, except for a small portion acquired subsequently for $250, was purchased in 1896 for $1600, including in this price an old mill and dam located thereon. A dispute as to the riparian rights was later settled by the payment of $500, so that the total cost of the land including the mill building and the dam was $2,350. Respondent, however, now values the site exclusive of dam and mill building, now used as a pumping station, at $10,000 on the theory that this figure represents the market value of the property as a power site. The figure used is arrived at by a calculation of the amount of saving to respondent by the use of water power for pumping as against the use of electricity. Respondent claims that one half of this capitalized annual saving represents the market value of the power site. Complainants, however, deny that such a theoretically computed market value of water power sites in fact exists in the vicinity. Substantial and convincing testimony was produced to show that there has been no development or enhancement of market values in the past ten years, but that there are a number of such sites along this stream which have been abandoned and can be purchased for nominal prices.

In view of the above evidence, the Commission is of the opinion and finds that respondent's theory of market value cannot be accepted, but that on such a theory the correct figure would be approximately $6,414. The Commission is of the opinion, based on the testimony set forth, that the present market value

of the land and water power together does not exceed $2,350. For the reservoir site the Commission allows the sum of $300.

Respondent's reproduction cost estimate for dam and forebay is $5,576 and complainants' corresponding estimate, $4,212. Complainants' witness admits that his estimate does not contemplate the replacement of the dam foundations as they now exist and that he did not know the quantities contained in the present structure. Respondent's quantities will, therefore, be accepted. The Commission's estimate, using these quantities and considering the evidence in regard to unit prices, is, therefore, $5,266 for dam and forebay.

Respondent's distribution reservoir, having a capacity of 250,000 to 300,000 gallons, is approximately 53 feet by 103 feet in ground plan, and is excavated out of shale with concrete footings. Respondent's estimate of $7,370 is based on a masonry stone bottom, but the testimony of the contractor who repaired the structure in 1923 is that the footings on the reservoir walls extend about 5 feet out into the reservoir and that the remainder of the bottom consists of a thin coating of cement over clay. The Commission is, therefore, of the opinion that $5,600 is a fair estimate of the reproduction cost of the reservoir.

[2] The present pumping station building was originally a mill, with a 22-inch solid masonry wall for the first floor and log walls covered with clap board for the second and third floors. Both parties admit that such a building would never be reproduced as it now stands, and neither of them have presented estimates of the cost of such reproduction. Respondent's evidence is as to the cost of a suitable building at the rate of 30 cents per cubic foot, and produces thereby a cost of $5,400. Complainants' estimate, also of the cost of a building which would in their opinion be suitable, but not the building actually in use, is $1,500. The Commission is of the opinion that both of these estimates are of doubtful value for the purpose offered, but will allow a sum of $5,000 as the reproduction cost of the entire existing building. It is established of record that but one-half of the first floor of this building is used and useful. Giving consideration to this fact, the Commission finds that the reproduction cost new of the used and useful portion is $2,310.

Moreover, the fact that such a building would not be reproduced will be given due weight hereafter in determining the fair value of respondent's plant.

[3] As to the pumping station equipment, the difference between the two estimates is based on the fact that complainants do not consider the existing pumps proper for the work done by them, and their estimate is made, not on the cost of reproducing the existing equipment, but of substituting a lesser equipment which they deem adequate. In view of the fact that in the prior rate case the borough contended that respondent's plant was so under-equipped, in that it did not have two pumps, as to render inadequate fire protection service, and since the second pump was added by the company following that complaint, the Commission is not now disposed to reject the second pump as not being used or useful. Respondent's estimate of $4,196 is accordingly accepted.

The respective estimates of respondent and complainants for the general overheads including engineering, administrative, legal, promotion, and organization expenses, and interest during construction, are respectively, $7,600 and $5,315. The Commission's estimate of these costs totals $6,456.

[4–8] For going cost or going concern value, the parties estimate $5,500 and $3,987 as the proper amounts. The Commission, giving consideration to the development of the community and the history of respondent, is of the opinion and finds that $4,350 is the proper allowance for such value.

Respondent bases its estimate for accrued depreciation on the 4 per cent sinking fund theory, and complainants on straight line methods and arrive at the respective allowances of $8,237, and $14,910. The parties are in substantial accord as to the lives and ages of the items of property entering their estimates. The Commission will in this case follow the 4 per cent sinking fund method, and in its treatment of annual depreciation hereinbelow will be consistent therewith. The Commission's allowance for accrued depreciation is therefore $7,124. The total of the several estimates of the cost of reproduction of the various items of property being $60,648, the estimated reproduction cost depreciated is, therefore, $53,524.

In the prior case before the Commission, respondent estimated its historical cost to be $24,751, as of December 31, 1917. If this amount be increased by the net additions to fixed capital from that date to December 31, 1926, the historical cost as of this latter date is found to be $31,686.

Considering these and all other elements of value established by the record, rather than reproduction cost alone as respondent seems to contend, and allowing $300 for working capital, the Commission finds and determines the fair value of respondent's property to be $50,000, upon which a return of 7 per cent will be allowed, or $3,500.

Respondent, on a sinking fund basis, claims an annual depreciation of its plant in amount of $570; complainants on a straight line basis estimate $424. The Commission, continuing in the use herein of the sinking fund methods followed in regard to accrued depreciation, and applying this method correctly and consistently therewith, finds the proper annual amount to be appropriated from revenue for this purpose is $225. Of the operating expenses of $2,000 claimed by respondent, $1,000 is for salaries for the three stockholder-officers of the company. Under the circumstances the Commission will allow $1,450 for expenses of operation. As the agreed total revenue from the tariff here involved, $6,275, is substantially in excess of the total of these allowances and the fair return previously mentioned, namely $5,175, it follows that respondent's new rates are excessive and the complaint must be sustained. From the annual reports of record it appears that the revenue produced by the prior tariff P. S. C. Pa. No. 4, is approximately equal to the total revenue to which respondent is properly entitled. An order will accordingly issue rescinding the report and order of this Commission dated December 21, 1928, but sustaining the complaint and directing respondent to file a new tariff reinstating the rates contained in its former tariff P. S. C. Pa. No. 4.
P.U.R.1929D.